

Table of Contents

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part I. Purchasing

Subpart 1. Central Purchasing Procedures

Chapter 3.	Specifications	1
Chapter 5.	Competitive Sealed Bidding.....	3
Chapter 7.	Small Purchases.....	9
Chapter 9.	Sole Source Procurement	9
Chapter 11.	Emergency Procurement	10
Chapter 13.	Cancellation of Solicitations; Rejection of Bids or Proposals.....	11
Chapter 15.	Responsibility and Prequalification.....	12
Chapter 17.	Types of Contracts.....	13
Chapter 18.	Progressive and Multiple Awards	14
Chapter 19.	Multi-Year Contracts.....	15
Chapter 20.	Leases of Movables	15
Chapter 21.	Miscellaneous Provisions	16
Chapter 22.	Inspection of Plant and Supplies; Audit of Records.....	16
Chapter 23.	Reporting of Suspected Collusive Bidding or Negotiations.....	17
Chapter 25.	Intergovernmental Regulations	18
Chapter 29.	Education.....	19
Chapter 31.	Conduct of Hearing Louisiana Procurement Code.....	19
Chapter 33.	Vendors.....	24

Subpart 3. Equipment-Lease-Purchase Program

Chapter 51.	General Provisions.....	25
Chapter 53.	Procurement of Equipment.....	25
Chapter 55.	Procedures for Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance.....	29

Part III. Facility Planning and Control

Chapter 1.	Capital Improvement Projects	35
Subchapter A.	Procedure Manual.....	35
Subchapter B.	Historic Restoration	43
Chapter 2.	Capital Outlay Budget Request Forms	44
Chapter 3.	Louisiana Building Code for State-Owned Buildings.....	52
Subchapter A.	Part IV of Chapter 8 of Title 40 of Louisiana Revised Statutes.....	52
Chapter 5.	Rental and Lease Procedure	53

Table of Contents

Chapter 7.	Demolition or Disposing of State-Owned Buildings.....	58
Chapter 9.	Public Contracts.....	58

Part V. Procurement of Professional, Personal, Consulting and Social Services

Chapter 1.	Procurement of Professional, Personal, Consulting and Social Services	61
Subchapter A.	General Provisions.....	61
Subchapter B.	Contracts Let Via a Request for Proposals Process	68
Subchapter C.	Contracts for Data Processing Consulting Services in an Amount Greater than \$100,000	70
Subchapter D.	Revised Statutes.....	72

Part VII. Property Control

Chapter 1.	General Provisions.....	77
Chapter 3.	State Property Inventory	78
Chapter 5.	State Property Disposition.....	83
Chapter 7.	Agencies with Integrated Inventory Control Systems and Miscellaneous Exceptions	86
Chapter 9.	Noncompliance	87

Part IX. Federal Property Assistance Agency

Chapter 1.	Legal Authority	89
Chapter 3.	Designation of State Agency	89
Chapter 5.	Inventory Control and Accounting System	89
Chapter 7.	Return of Donated Property.....	91
Chapter 9.	Financing and Service Charges	91
Chapter 11.	Terms and Conditions on Donable Property	92
Chapter 13.	Nonutilized Donable Property	93
Chapter 15.	Fair and Equitable Distribution	94
Chapter 17.	Eligibility	95
Chapter 19.	Compliance and Utilization.....	96
Chapter 21.	Consultation with Advisory Bodies, Public and Private Groups	97
Chapter 23.	Audits	97
Chapter 25.	Cooperative Agreements	98
Chapter 27.	Liquidation	98
Chapter 29.	Forms	98
Chapter 31.	Records	98

Part XI. Fleet Management

Chapter 1.	General Provisions.....	99
Index	107

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part I. Purchasing
Subpart 1. Central Purchasing Procedures

Chapter 3. Specifications

§301. General Purpose and Policies

A. Definition and Purpose

1. *Specification*—Any description of the physical functional, or performance characteristics, or of the nature of a supply, service, construction or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these regulations.

2. The purpose of a specification is to serve as a basis for obtaining a supply, service, or major repair item adequate and suitable for the state's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the state that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the state's requirements.

3. All definitions as listed in R.S. 39:1556 and R.S. 39:1591 will apply.

B. Nonrestrictiveness. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or major repair item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that is not practicable to use a less restrictive specification.

C. Preference for Commercially Available Products. It is the general policy of this state to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

D. Escalation and De-Escalation Clauses. Bid specifications may contemplate a fixed escalation or de-escalation in accordance with a recognized escalation index.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§303. Availability of Documents

A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection pursuant to R.S. 44.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§305. Authority to Prepare Specifications

A. Statutory Authority of the Chief Procurement Officer and State Agencies. The chief procurement officer is authorized to prepare specifications in accordance with R.S. 39:1652, subject to the authority granted purchasing agencies in R.S. 39:1653 of the Louisiana Procurement Code.

B. Delegation of Authority to State Agencies. The chief procurement officer may delegate in writing the authority to prepare and utilize specifications to purchasing agencies and using agencies for any type of supplies, services, or major repairs provided such delegations may be revoked by the chief procurement officer.

C. Authority to Contract for Preparation of Specifications

1. A contract to prepare specifications for state use in procurement of supplies or services may be entered into when a written determination is made by the chief procurement officer, or the head of a purchasing agency authorized to prepare such specifications, that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the state.

2. Whenever specifications are prepared by other than state personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§307. Procedures for the Development of Specifications

A. Provisions of General Application

1. Application of Section. This Section applies to all persons who may prepare a specification for state use, including the chief procurement officer, the head of a

purchasing agency, the head of a using agency, the designees of such officers, and also consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

2. **Specification of Alternates May Be Included.** To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§309. Definitions and Use

A. Proprietary Specifications

1. **Definition.** *Proprietary Specification* **Ca** specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

2. Use

a. Since use of a proprietary specification is restrictive, it may be used only when the chief procurement officer or the head of a purchasing agency makes a written determination that only the identified brand name item or items will satisfy the state's needs.

b. Some examples of circumstances which could necessitate proprietary procurement are:

i. revolving fund purchases for resale, such as groceries, canned good, packing house products, drug sundries, candy, tobacco and other similar items;

ii. revolving fund purchases of foods for cafeterias, dining halls or dormitories;

iii. standard replacement parts such as automobiles, machinery, and equipment;

iv. repairs to automobiles, machinery, equipment, etc.

3. **Competition.** The procurement officer shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Chapter 9 (Sole Source Procurement) of this Part.

4. **Reports.** The chief procurement officer shall submit reports to the commissioner or cabinet department head within 90 days after the end of the fiscal year stating any brand name contracts used; the number of suppliers solicited; the identity of these suppliers; the supplier awarded the contract; and the contract price.

B. Brand Name or Equal Specification

1. **Definition.** A specification that cites brand names, model number, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

2. **Use.** Some examples of circumstances which could necessitate the use of brand name or equal specifications are:

a. no specification for a common or general use item or qualified products list is available; or

b. time does not permit the preparation of another form of specification, not including a brand name specification; or

c. the nature of the product or the nature of the state's requirements makes use of a brand name or equal specification suitable for the procurement; or

d. use of a brand name or equal specification is in the state's best interest;

e. specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall state that substantially equivalent products to those designated will be considered for award.

3. Competition

a. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

b. Unless the chief procurement officer or the head of a purchasing or using agency authorized to finally approve specifications determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

C. Qualified Products List

1. **Definition.** *Qualified Products List* **Ca** specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next Invitation for Bids; on Approved Brands List.

2. **Use.** A qualified products list may be developed with the approval of the chief procurement officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or major repair items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

3. Comments, Final Approval, Revisions, and Cancellation. Comments on final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining a qualified products list, and the cancellation thereof, shall follow the procedures of Subparagraphs D.3.b-e of this Section applicable to specifications for common or general use items.

4. Solicitation

a. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

b. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

D. Common or General Use Item

1. Definition. *Specification for a Common or General Use Item* is a specification which has been developed and approved for repeated use in procurement in accordance with the provisions of R.S. 39:1651.A and B.

2. Use. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, or major repair item, or need, it shall be used unless the chief procurement officer or the head of a purchasing agency makes a written determination that its use is not in the state's best interest and that another specification shall be used.

3. Special Additional Procedures

a. Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized:

i. when a supply, service, or major repair item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or major repair item as commercially produced or provided remain relatively stable while the frequency or volume of procurement is significant;

ii. where the state's recurring needs require uniquely designed or specially produced items; or

iii. when the chief procurement officer, or the head of a purchasing or using agency authorized to prepare such specifications, finds it to be in the state's best interest.

b. In the event a using agency requests the preparation of a specification for a common or general use item, the chief procurement officer shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii have been met.

c. Comments on the Draft. The chief procurement officer, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to comment on the draft

specification to the using agencies, and as reasonable a number of manufacturers and suppliers as such officer deems appropriate.

d. Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the chief procurement officer, or by the head of a purchasing or using agency authorized to give such approval.

e. Revisions. Revisions to specifications for common or general use items which do not change the technical elements of the specifications but which are necessary for clarification may be made upon approval of the chief procurement officer, or the head of a purchasing or using agency authorized to approve such specifications. Interim revisions to fit the requirements for a particular procurement which change the technical elements of the specification may be made by the chief procurement officer, or the head of a purchasing or using agency authorized to approve such a specification. All other revisions shall be made in accordance with Subparagraphs D.3.a-d of this Section.

f. Cancellation. A specification for a common or general use item may be canceled by the chief procurement officer, or by the head of a purchasing or using agency authorized to give final approval to such specifications.

E. Use of Functional or Performance Descriptions. State agencies should emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the state to the extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 5. Competitive Sealed Bidding

§501. Content of the Invitation for Bids

A. Invitation for Bids

1. Purchases where the estimated cost is over \$5,000 shall be made by sending out written Invitations for Bids to at least five responsible bidders, and if feasible, use should be made of state purchasing's computerized vendor list. Purchases where the estimated cost is over \$25,000 shall be advertised in accordance with R.S. 39:1594. All advertisements or written invitations for bids shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

a. the date and time when bids will be received, opened and publicly read;

b. the names and locations of the state agencies for which the purchases are to be made;

c. where and how specifications and bid forms may be obtained.

2. The Invitation for Bids shall be on the state's standard forms containing all pertinent information and shall be full and complete including specifications, quantities, units, packaging and number of containers to the case.

B. Content. The Invitation for Bids shall include the following:

1. the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and

2. the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

C. Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

D. Special Conditions. If any special conditions are to apply to a particular contract, they shall be included in the Invitation for Bid.

E. Types of Purchases. Purchases are made in two different ways.

1. Open Market: a purchase made other than under a schedule or term contract.

2. Term Contracting: a technique by which a source of supply is established for a specific period of time. Term contracts are usually based on indefinite quantities to be ordered "as needed", although such contracts can specify definite quantities with deliveries extended over the contract period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

§503. Bidding Time

A. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. For bids over \$25,000, a minimum of 21 days should be provided unless the chief procurement officer or his designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days, except as provided in R.S. 39:1598 and Chapter 11 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

§505. Addenda Modifying Invitation for Bids

A. Addenda modifying invitation for bids shall not be issued within a period of three working days prior to the advertised time for the opening of bids, excluding Saturdays,

Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying an Invitation for Bid within the three working day period prior to the advertised time for the opening of bids, then the opening of bids shall be extended exactly one week, without the requirement of re-advertising. Addenda shall be sent to all prospective bidders known to have received an Invitation for Bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

§507. Bidder Submissions

A. Bid Forms. All written bids, unless otherwise provided for, must be submitted on, and in accordance with, forms provided, properly signed. Bids submitted in the following manner will not be accepted:

1. bid contains no signature indicating an intent to be bound;

2. bid filled out in pencil; and bids must be received at the address specified in the Invitation for Bids prior to bid opening time in order to be considered.

B. Bid Samples and Descriptive Literature

1. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, packaging, or operation of an item which enables the state to consider whether the item meets its specifications and needs.

2. Bid Sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

3. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

4. The Invitation for Bids shall state whether bid samples or descriptive literature should be submitted. Unsolicited bid samples may not be returned.

5. When required, samples must be received not later than the time set or specified for bid opening, free of expense to the state. Samples should be marked plainly with name and address of bidder, bid number and opening date of bid, also memorandum indicating whether bidder desires return of sample or samples. Providing they have not been used or made useless through tests, when requested, samples submitted will be returned at bidder's risk and expense. All samples submitted are subject to mutilation as the result of tests by the agency. Failure to submit samples within time allowed will result in disqualification or nonconsideration of bid.

C. Conditional Bids. Conditional bids are subject to rejection in whole or in part. A conditional bid may be accepted if the condition is not a substantial deviation from the Invitation for Bid.

D. All or Part. Bids may be considered for all or part of total quantities.

E. Bids Binding. Unless otherwise specified, all formal bids shall be binding for a minimum of 30 calendar days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the state may award to this bidder after this period has expired, or after the period specified in the formal bid has expired.

F. Net Prices. Bid prices, unless otherwise specified, must be net including transportation and handling charges prepaid by contractor to destination.

G. Taxes. Vendor is responsible for including all applicable taxes in the bid price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

§509. Bidder Lists

A. Bidder lists may be compiled to provide the state with the names of businesses that may be interested in competing for various types of state contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a state contract.

B. Where feasible, use should be made of the state purchasing's computerized vendor list. It shall be the responsibility of the bidder to confirm that his company is in the appropriate bid category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

§511. Pre-Bid Conferences

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids and shall be advertised if over \$25,000 and attendance is mandatory. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written addenda as provided in §505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

§515. Pre-Opening Modification or Withdrawal of Bids

A. Procedure. Bids may be modified or withdrawn by written, telegraphic or fax notice received at the address designated in the Invitation for Bids prior to the time set for bid opening, as recorded by date stamp at the purchasing agency.

B. Withdrawal of Bids. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state, unless return is requested in writing.

C. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder if requested when withdrawal of the bid is permitted.

D. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

§517. Late Bids

A. Formal bids and addenda thereto, received at the address designated in the Invitation for Bids after time specified for bid opening will not be considered, whether delayed in the mail or for any other causes whatsoever. If a bid is delayed by actions of the agency handling the solicitation, and this delay prejudices a vendor, then the agency shall cancel the solicitation and re-bid. In no case will late bids be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

§519. Receipt, Opening and Recording of Bids

A. Receipt. Upon receipt, all bids and modifications will be time-stamped but not opened. They shall be stored in a secure place until bid opening time.

B. Opening and Recording

1. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders and the bid price shall be read aloud or otherwise made available and shall be recorded.

2. The opened bids shall be available for public inspection, in accordance with R.S. 44:Chapter I.

C. Postponed Openings ~~C~~Exceptions. In the event that bids are scheduled to be opened on a day that is a federal holiday, or if the governor by proclamation creates an unscheduled holiday, or for any cause that exists that creates a nonworking day, bids scheduled to be opened on that day shall be opened on the next working day at the same address and time specified in the Invitation for Bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1992), amended LR 21:566 (June 1995).

§521. Mistakes in Bids

A. Correction or Withdrawal of Bids. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations. A request to withdraw a bid after the bid opening must be made within three business days after bid opening, and supported in writing. If it is determined that the error is patently obvious, then the bid may be withdrawn, and if a bid guaranty was required it shall be returned to the bidder.

B. Minor Informalities. Minor informalities are matters of form rather than substance which are evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The chief procurement officer or the head of a purchasing agency may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include, but are not limited to, the failure of a bidder to:

1. return the number of signed bids required by the Invitation for Bids;
2. sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound;
3. sign or initial write-overs, or corrections in bids;
4. get an agency's certification that a mandatory job-site visit was made; and
5. return nonmandatory pages of the bid proposal.

C. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Some examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, unit prices placed in the extended amount column, and failure to return an addendum provided there is evidence that the addendum was received. When an error is made in extending total prices the unit bid price will govern. Under no circumstances will a unit bid price be altered or corrected unless it is obvious that a unit price is submitted in a different unit of measure than shown on the bid form and the bidder's extended total verifies that the unit bid price was submitted using a wrong unit of measure, then the unit price may be changed to correspond with the correct unit of measure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

§523. Bid Guaranty and Bond**A. Bid Guaranty**

1. When specified in the Invitation for Bids, a bid bond, cashier's check, or certified check, made payable to the Department of the Treasury of the State of Louisiana, for the amount specified, must accompany each bid.

2. If a bid bond is used, it shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide.

B. Performance Bond

1. Any performance bond furnished shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

2. No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

3. In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the state of Louisiana. If a performance bond has been required, the requirement cannot be waived, unless otherwise allowed by Louisiana statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

§525. General Guaranty

A. At a minimum, the state shall require that the contractor submit to the following guarantees.

1. Hold the state, its agents and employees harmless against any liability for negligent acts or omissions by the contractor.

2. Hold the state, its agents and employees harmless against any liability for infringement of any copyright or patent arising from performance of this contract.

3. Protect the state against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

4. Pay for all necessary permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made or the contract to be performed, and of the state of Louisiana.

B. The contractor may propose substitute guarantees which provide greater protection to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1851.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

§527. Bid Evaluation and Award

A. General. The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids." See R.S. 39:1594.G (Competitive Sealed Bidding, Award) of the Louisiana Procurement Code. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.

B. Responsibility and Responsiveness

Responsive Bidder—A person who has submitted a bid under R.S. 39:1594 which conforms in all substantive respects to the invitation for bids including the specifications set forth in the invitation.

Responsible Bidder or Offeror—A person who has the capability in all respects to perform the contract requirements and the integrity and reliability which will assure good faith performance.

C. Product Acceptability

1. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

a. inspection or testing of a product prior to award for such characteristics as quality or workmanship;

b. examination of such elements as appearance, finish, taste, or feel; or

c. other examinations to determine whether the product conforms with any other purchase description requirements, such as unit packaging. If bidder changes the

unit or packaging, and it is determined that the change prejudices other bidders, then the bid for the changed item shall be rejected.

2. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

D. Determination of Lowest Bidder

1. Following determination of product acceptability as set forth in Subsection C of this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include but are not limited to transportation cost, and ownership or life-cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall:

a. be reasonable estimates based upon information the state has available concerning future use; and

b. treat all bids equitably.

E. Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that required by the Invitation for Bids unless the bid is also the lowest bid as determined under Subsection D of this Section. Further, this Section does not permit negotiation with any bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

§529. Tie Bids

A. Definition

Tie Bids—Two responsive bids from responsible bidders that are identical in price and which meet all requirements and criteria set forth in the Invitation for Bids.

B. Resident Business Preference

1. In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to nonresident businesses where there is a tie bid and where there will be no sacrifice or loss of quality.

2. *Resident Business*—One authorized to do and doing business under the laws of this state, which either:

a. maintains its principal place in business in the state; or

b. employs a minimum of two employees who are residents of the state.

C. Award. In the discretion of the chief procurement officer or the head of a purchasing agency, award shall be made in any manner that will discourage tie bids. A written determination justifying the manner of award must be made. This would include, but is not limited to, consideration of such factors as resident business, proximity, past performance, delivery, completeness of bid proposal. Tie bids over \$10,000 must be reported to the attorney general. (See Chapter 23 **C** Reporting of Suspected Collusive Bidding or Negotiations).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

§531. Awarding of Bids

A. Rejection of Bids. The right is reserved to reject any or all bids in whole or in part, and to award by items, parts of items, or by any group of items specified. Also, the right is reserved to waive technical defects when the best interest of the state thereby will be served.

B. Information on Bid Results. Information pertaining to results of bids may be secured by visiting the agency, except weekends and holidays, during normal working hours, or by complying with §535.

C. Cash Discounts

1. Open Market Purchases and Definite Quantity Term Contracts. All cash discounts will be taken. However, cash discounts will only be considered in determining an award on terms for 30 days or more and at least 1 percent.

2. Indefinite Quantity Term Contracts. Cash discounts will be accepted and taken but will not be considered in determining awards.

D. Increase or Decrease in Quantities. Unless otherwise specified in the Invitation for Bids, the state reserves the right to increase or decrease the quantities of any item or items shown in the bid by 10 percent.

E. Availability of Funds. A contract shall be deemed executory only to the extent of appropriations available to each agency for the purchase of such articles.

F. All or None Bids

1. A business may limit a bid on acceptance of the whole bid, whereupon the state shall not thereafter reject part of such bid and award on the remainder. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or those items bid.

2. Overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual's bid or a computation of all low bids on individual items of those bids that are not conditioned "all or none."

a. Open Market Purchases. When multiple items are contained on any solicitation and the state chooses to make an item or group award in order to save the state the cost of

issuing a different purchase order, an award may be made to a vendor on that item if the total bid for said item is \$1,000 or less, and the difference between the low bidder and the bidder receiving the award is \$100 or less.

b. An "all or none" bid may be awarded in a similar fashion, to save the state the cost of issuing another purchase order, if the difference in the overall cost between the vendors is \$100 or less and no single item exceeds \$1,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

§533. Documentation of Award

A. Following award, a record showing the basis for determining the successful bidder, including reasons for rejecting any nonresponsive bids, shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

§535. Publicizing Awards

A. Written notice of award shall be sent to the successful bidder. In procurement over \$25,000, each unsuccessful bidder shall be notified of the award provided that he submitted with his bid a self-addressed stamped envelope requesting this information. Notice of award shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

§537. Assignments

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without written consent of the commissioner. This does not include agencies exempt in R.S. 39:1572.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

§539. Deliveries

A. Extension of Time. Any extension of time on delivery or project completion time must be requested in writing by the vendor and accepted or rejected in writing by the purchasing department. Such extension is applicable only to the particular item or shipment affected.

B. Additional Charges. No delivery charges shall be added to invoices except when express delivery is substituted on an order for less expensive methods specified in contract. In such cases, when requested by the agency, the difference between freight or mail and express charges may be added to the invoice.

C. **Weight Checking.** Deliveries shall be subject to reweighing on official scales designated by the state. Payments shall be made on the basis of net weight of materials delivered.

D. **Rejection of Deliveries, Payment for Used Portion.** Payment for any used portion of delivery found (as a result of tests or otherwise) to be inferior to specifications or contract requirements, will be made by the state on an adjusted price basis, using the procedures outlined in R.S. 39:1673.

E. **Contracts** **Reduction in Prices.** All state agencies will receive the benefit of any reduction in price on any unshipped portion of any commodity contract. In the event the contractor reduces his price to any one state agency or political subdivision of the state, or makes a general reduction in price, all state agencies being supplied under these contracts are automatically entitled to the lower price; and the contractor shall rebate to all state agencies in a proportional amount. Also, in the event the total purchases of all state agencies of any items covered by the contract entitle the state to a greater quantity discount, the state shall receive the quantity discount appropriated the total amount of actual purchases made by all state agencies. All price reductions made by any supplier under these contracts, designed for the benefit of any state agency, shall be made directly to Purchasing, Division of Administration. Also, the state agencies shall report any offer of a reduction in contract price to Purchasing, and the right is reserved to accept or reject such offers; but the best interest of the state as a whole will always be considered.

F. **Invoices.** Upon delivery of each order and its acceptance by the state agency, the supplier shall bill the state agency by means of invoice and the invoice shall make reference to the purchase order number, contract award number, and/or purchase requisition number. All invoices shall be submitted by the supplier on the supplier's own invoice forms, in duplicate, directly to the accounting office of the state agency as required by the purchase order.

G. Payment

1. After receipt and acceptance of order and receipt of valid invoice, payment will be made by the state agency within 30 days. Payment will be made at the respective unit prices shown on the bid or price schedule, less any percentages off list price, less federal excise tax (unless otherwise specified), less cash discount earned.

2. If a state agency without reasonable cause fails to make any payment due within 90 days of the due date prescribed by contract, the state agency shall pay a penalty in accordance with R.S. 39:1695.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 7. Small Purchases

§701. Small Purchases

A. Any procurement not exceeding the amount established by executive order of the governor may be made in accordance with small purchase procedures prescribed by such executive order, except that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

B. Any person who intentionally violates this Part will be penalized in accordance with R.S. 39:1679.

C. See appropriate Executive Order entitled "Small Purchases."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

Chapter 9. Sole Source Procurement

§901. Application

A. These provisions shall apply to all sole source procurement unless emergency conditions exist as defined in Chapter 11 (Emergency Procurement) of these regulations.

B. R.S. 39:1597 of the Louisiana Procurement Code provides in pertinent part:

"A contract may be awarded for a required supply, service, or major repair without competition when, under regulations, the chief procurement officer or his designee above the level of procurement officer determines in writing that there is only one source for the required supply, service, or major repair item."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

§905. Conditions for Use of Sole Source Procurement

A. Determination

1. The determination as to whether a procurement shall be made as a sole source shall be made by the chief procurement officer, or head of a purchasing agency. Such determination shall be in writing. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

2. Sole source procurement is permissible only if a requirement is available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. Examples of circumstances which could necessitate sole source procurement are:

a. where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

b. where a sole supplier's item is needed for trial use or testing;

c. procurement of items for resale;

d. procurement of public utility services;

e. registered breeding stock may be purchased on a selective basis without bids, after approval as to price and quality of such stock by the Commissioner of Agriculture and a specialist of Louisiana State University to be designated by the head of the College of Agriculture;

f. other livestock may be purchased on a selective basis without bids after approval as to health by the commissioner of agriculture, provided that the cost per head does not exceed \$1,500. Any livestock purchases above this amount must have prior approval of the chief procurement officer.

B. Purchase of Antiques, Used or Demonstrator Equipment

1. Any agency may procure any equipment which is used or which has been previously purchased by an individual or corporation where the procurement officer has determined that the procurement of said equipment is cost effective to the state.

2. The used equipment shall be purchased by the head of the agency within the price range set by the director of state purchasing in his statement of written approval for the purchase which must be obtained by the head of the agency prior to the purchase.

3. The head of the agency shall certify in writing to the director of state purchasing all of the following:

a. the price for which the used equipment may be obtained;

b. the plan for maintenance and repair of the equipment and the cost thereof;

c. the savings that will accrue to the state because of the purchase of the used equipment;

d. the fact that following the procedures set out in the Louisiana Procurement Code will result in the loss of the opportunity to purchase the equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982) amended LR 21:566 (June 1995).

§907. Record of Sole Source Procurement

A. A record of sole source procurement shall be maintained that lists:

1. each contractor's name;
2. the amount and type of each contract;

3. a listing of the supplies, services, or major repairs procured under each contract; and

4. the identification number of each contract file.

B. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

Chapter 11. Emergency Procurement

§1101. Application

A. The provisions of this Section apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

§1103. Definition of Emergency Conditions

A. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the chief procurement officer. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. the functioning of Louisiana government;
2. the preservation or protection of property; or
3. the health or safety of any person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

§1105. Scope of Emergency Procurement

A. Emergency procurement shall be limited to only those supplies, services, or major repair items necessary to meet the emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

§1107. Authority to Make Emergency Procurement

A. Any state agency may make emergency procurement of up to \$5,000 when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the chief

procurement officer shall be obtained prior to the procurement. Prior to all such emergency procurement of \$5,000 or more, the chief procurement officer, head of a state agency, or either officer's designee shall approve the procurement. Fax requests should be submitted if time permits, and must contain adequate justification for the emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

§1109. Source Selection Methods

A. General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained. Any offer accepted shall be confirmed in writing.

B. After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

§1111. Determination and Record of Emergency Procurement

A. Determination. The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of a particular contractor. Such determination shall be sent promptly to the chief procurement officer.

B. Record

1. A record of emergency procurement shall be maintained that lists:

- a. each contractor's name;
- b. the amount and type of each contract;
- c. a listing of the supplies, services, or major repairs procured under each contract; and
- d. the identification number of each contract file.

2. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

Chapter 13. Cancellation of Solicitations; Rejection of Bids or Proposals

§1301. Scope

A. The provisions of this Section shall govern the cancellation of solicitations issued by the state and rejections of bids or proposals in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

§1303. Policy

A. Solicitations should only be issued when there is a funded, valid need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be canceled only when it is in the state's best interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing Office, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

§1305. Cancellation of Solicitations Notice

A. Each solicitation issued by the state shall state that the solicitation may be canceled as provided in these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

§1307. Reasons for Cancellation

A. A solicitation may be canceled in whole or in part when the chief procurement officer or the head of a purchasing agency determines in writing that such action is in the state's best interest for reasons including but not limited to:

1. the state no longer requires the supplies, services, or major repairs;
2. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
3. ambiguous or otherwise inadequate specifications were part of the solicitation;

4. the solicitation did not provide for consideration of all factors of significant cost to the state;

5. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

6. all otherwise acceptable bids received are at unreasonable prices; or

7. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

B. When a solicitation is canceled prior to opening, a notice of cancellation shall be sent to all businesses solicited. When a solicitation or item is canceled after bids are opened, a notice of cancellation should be sent to all bidders if the amount canceled exceeds the "Small Purchases" Executive Order.

C. The notice of cancellation shall:

1. identify the solicitation;
2. briefly explain the reason for cancellation; and
3. where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar supplies, services, or major repairs.

D. Documentation. The reasons for cancellation shall be made a part of the procurement file and available for public inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

§1309. Rejection of Individual Bids or Proposals

A. General. This Subsection applies to rejections of individual bids in whole or in part.

B. Notice in Solicitation. Each solicitation issued by the state shall provide that any bid may be rejected in whole or in part when in the best interests of the state as provided in these regulations.

C. Reasons for Rejection. As used in this Section "bid" means any bid submitted in competitive sealed bidding and includes submissions under Chapter 7 (Small Purchases). Reasons for rejecting a bid include but are not limited to:

1. the business that submitted the bid is nonresponsible as determined under §1511 of these regulations;
2. the bid is not responsive, that is, it does not conform in all substantive respects to the Invitation for Bids. (See Chapter 5 of these regulations); or
3. the supply, service, or major repair items is unacceptable, that is, it fails to meet the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids. See Chapter 5, §527.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

§1311. Disposition of Bids or Proposals

A. When bids or proposals are rejected, or a solicitation is canceled after bids have been opened, the bids shall be retained in the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

Chapter 15. Responsibility and Prequalification

§1501. Definitions

Responsible Bidder or Offeror A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See R.S. 39:1591(7) and R.S. 39:1601 of the Louisiana Procurement Code. For the purpose of these regulations, "capability" as used in this definition means capability at the time of award of the contract, unless otherwise specified in the Invitation for Bid.

Solicitation An Invitation for Bids, or any other document, such as a request for quotations and requests for proposals issued by the state for the purpose of soliciting offers to perform a state contract.

Suppliers As used in R.S. 39:1602 (Prequalification of Suppliers) of the Louisiana Procurement Code, means prospective bidders or offerors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

§1503. Application

A. A determination of responsibility or nonresponsibility shall be governed by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

§1505. Standards of Responsibility

A. Standards

1. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective contractor:

- a. has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability of meeting all contractual requirements;

- b. has a satisfactory record of performance;
 - c. has a satisfactory record of integrity;
 - d. has qualified legally to contract with the state;
- and
- e. has supplied the necessary information in connection with the inquiry concerning responsibility.

2. Nothing herein shall prevent the procurement officer from establishing additional responsibility standards, provided that these additional standards are set forth in the solicitation.

B. Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

§1507. Ability to Meet Standards

A. The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- 1. evidence that such contractor possesses such necessary items;
- 2. acceptable plans to subcontract for such necessary items; or
- 3. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

§1509. Duty Concerning Responsibility

A. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

§1511. Written Determination of Nonresponsibility Required

A. If a bidder or offeror who otherwise would have been awarded a contract of \$5,000 or more is found nonresponsible, a written determination of nonresponsibility

setting forth the basis of the finding shall be prepared by the chief procurement officer, or head of a purchasing agency. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The determination shall be made part of the procurement file.

B. Any such bidder who is proposed to be disqualified shall be given a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

Chapter 17. Types of Contracts

§1701. Centralization of Contracting Authority

A. If the central purchasing agency has entered into a statewide competitive contract for supplies or services, all state governmental bodies, excluding those exempted from central purchasing by R.S. 39:1572.B., shall use such statewide competitive contracts when procuring such supplies or services unless given written exemption by the chief procurement officer. The following exceptions may be considered.

- 1. Functional differences, for example:
 - a. size available is not suitable because of space limitations;
 - b. compatibility with existing equipment.
- 2. Agency's need is so small that it cannot use the minimum order quantity in the contract.
- 3. Delivery of contract item does not meet agency's urgent requirement.

B. A lower local price is not justification for exception. The contract vendor has guaranteed prices for the term of the contract and is delivering the item to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995).

§1703. Policy Regarding Selection of Contract Types

A. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or major repairs to be procured, the uncertainties which may be involved in contract performance, and the extent to which the state or the contractor is to assume the risk of the cost of performance of the contract.

B. The objective when selecting a contract type is to obtain the greatest value of supplies, services, or major repairs at the lowest overall cost to the state. In order to achieve this objective, the chief procurement officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost and risk of performance and profit incentives bearing on the performance.

C. Among the factors to be considered in selecting any type of contract are:

1. the type and complexity of the supply, service, or major repair items being procured;
2. the difficulty of estimating performance costs such as the inability of the state to develop definitive specifications to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
3. the administrative costs to both parties;
4. the degree to which the state must provide technical coordination during the performance of the contract;
5. the effect of the choice of the type of contract on the amount of competition to be expected;
6. the stability of material or commodity market prices or wage levels;
7. the urgency of the requirement; and
8. the length of contract performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1591.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995).

§1705. Cost-Plus-a-Percentage-of-Cost Contracts

A. The cost-plus-a-percentage-of-cost system of contracting shall not be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), repromulgated LR 21:566 (June 1995).

§1707. Types of Contracts

A. Subject to the limitations of R.S. 39:1611 and 1612, any type of contract which will promote the best interest of the state may be used, provided that the chief procurement officer makes a written determination justifying the type of contract used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995).

Chapter 18. Progressive and Multiple Awards

§1801. Progressive Award

A. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. A progressive award may be in the state's best interest when awards to

more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§1803. Multiple Award

A. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the state is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the state's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the state's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of using agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:

1. the state shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract;

2. the state shall reserve the right to take bids separately if the chief procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring or special need of the state;

3. the contract shall allow the state to procure supplies produced, or services performed, incidental to the state's own programs, such as industries of correctional institutions and other similar industries, when such supplies or services satisfy the need.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§1805. Intent to Use

A. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award should be stated in the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§1807. Determination Required

A. The chief procurement officer shall make a written determination setting forth the reasons for a progressive or multiple award, which shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 19. Multi-Year Contracts

§1901. Determination

A. The multi-year method of contracting can be used to contract for more than one fiscal year when it has been determined in writing by the chief procurement officer that:

1. a multi-year contract will serve the best interests of the state by encouraging effective competition or otherwise prompting economies in state procurement; and
2. that the estimated requirements cover the period of the contract and are reasonably firm and continuing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

§1903. Conditions for Use of Multi-Year Contracts

A. The multi-year method of contracting may be used for:

1. contract performance which requires alteration in the contractor's facilities or operations involving high start-up costs;
2. contracts requiring uninterrupted services where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.

B. The following factors are among those relevant in determining if a multi-year contract may be used:

1. firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
2. lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;
3. stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or
4. the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

§1905. Multi-Year Contract Procedure

A. Solicitation. The solicitation shall state:

1. the amount of supplies or services required for the proposed contract period;
2. whether a unit price discounted off of established catalog price shall be given for each supply or service, and that such unit prices or discount shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);
3. that the multi-year contract will be canceled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any other termination clause in the contract;
4. that the chief procurement officer must notify the contractor that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;
5. how the multi-year contract award will be determined.

B. Evaluation and Award. The evaluation and award shall be made based on the total costs for the term as stated in the solicitation and permitted under the source selection method utilized.

C. Cancellation

1. "Cancellation," as used in multi-year contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available.
2. Cancellation results when the procurement officer notifies the contractor of nonavailability of funds for contract performance for any subsequent fiscal period.

D. Multi-Year Contract Regulations Inapplicable. Section 903 (Conditions for Use of Multi-Year Contracts) and §1905 (Multi-Year Contract Procedure) apply only to contracts for supplies or services described in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

Chapter 20. Leases of Movables

§2001. Description

A. A lease of movables is a contract for the use of equipment under which title does not pass to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§2003. Use

A. A lease of movables may be entered into provided:

1. it has been competitively bid in accordance with these rules and regulations, applicable executive orders, and policy and procedure memoranda;
2. it is in the best interest of the state;
3. all conditions for renewal and costs of termination are set forth in the lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§2005. Lease with Purchase Option

A. Unless a requirement can be met only by the leased supply as determined in writing by an officer above the level of procurement officer, a purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding. Before exercising such an option the chief procurement officer shall:

1. investigate alternative means of procuring comparable supplies; and,
2. compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated initial savings associated with exercise of a purchase option.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 21. Miscellaneous Provisions

§2101. Contract Provisions

A. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the state's discretion only, and shall be at the mutual agreement of the state and the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

§2103. Exercise of Option

A. Before exercising any option for renewal, extension, or purchase, the chief procurement officer should attempt to ascertain whether a re-solicitation is practical, in terms of current market conditions and trends and cost factors, and would be more advantageous to the state than renewal or extension of the existing contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

§2105. Goods Manufactured or Services Performed by Sheltered Workshops

A. R.S. 39:1595.4 provides in part that a preference shall be given by all governmental bodies in purchasing products and services from state supported sheltered workshops for persons with severe disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 22. Inspection of Plant and Supplies; Audit of Records

§2201. Inspection

A. State contracts may provide that the state may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract and shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

B. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

§2203. Audit of Records

A. The state may enter a contractor's or subcontractor's plant or place of business to:

1. audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to R.S. 39:1622; and

2. investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to R.S. 39:1672.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 23. Reporting of Suspected Collusive Bidding or Negotiations

§2301. Anticompetitive Practices

A. For the purposes of this Section, an anticompetitive practice is a practice among bidders or offerors which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products. Indications of suspected anticompetitive practices include identical bids or proposals, rotated low bids or proposals, sharing of the business, "tie-in" sales, resale price maintenance, and group boycotts (see Identical Bidding, §2309).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

§2303. Independent Price Determination

A. Every solicitation shall provide that by submitting a bid or offer, the bidder or offeror certifies that the price submitted was independently arrived at without collusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

§2305. Reporting Suspected Anticompetitive Practices

A. The chief procurement officer, in consultation with the attorney general, shall develop procedures, including forms, for reporting suspected anticompetitive practices. A procurement officer who suspects that an anticompetitive practice has occurred or may be occurring shall report the suspected anticompetitive practice to the Attorney General's Office, Anti-Trust Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

§2307. Detection of Anticompetitive Practices

A. In order to ascertain whether or not an anticompetitive practice may have occurred or may be occurring, the procurement officer will often find it necessary to study past procurement including, as appropriate, the following:

1. a study of the bidding history of a supply, service, or major repair item over an amount of time sufficient to determine any significant bidding patterns or changes;
2. a review of similar state contract awards over a period of time; or
3. consultation with outside sources of information, such as bidders or offerors who have competed for similar state business in the past but who are no longer competing for such business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

§2309. Identical Bidding

A. The term "identical bidding" means the submission by bidders or offerors of the same total price or the same price on a particular line item. The submission of identical bids may not signify the existence of collusion. In some instances, price controls imposed by state or federal governments result in the submission of identical bids. Bids may also be identical as a result of chance. Identical bids for supplies are more likely to occur due to chance if:

1. the supply is a commodity with a well-established market price or a brand name with a "suggested retail price;"
2. the quantity being purchased is small in relation to the supplier's total sales;
3. early delivery is required; or
4. transportation expenses are low relative to total costs.

B. In seeking to determine whether collusion has taken place, the procurement officer should view the identical bids against present and past pricing policies of the bidders or offerors, the structure of the industry involved, including comparisons of prices f.o.b. shipping point and f.o.b. destination, and the nature of the supply, service, or major repair involved, such as whether it is a basic chemical or material. Identical bids may also result from resale price maintenance agreements which are described in §2311.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

§2311. Possible Anticompetitive Practices

A. General. The practices which are described in Subsections B-F of this Section and which the procurement officer suspects might be anticompetitive shall be reported in accordance with §2305 (Reporting Suspected Anticompetitive Practices).

B. Rotated Low Bids or Proposals. Rotated low bids or proposals result where all bidders or offerors participating in the collusive scheme submit bids, but by agreement alternate being the lowest bidder or offeror. In order to determine whether rotation may be occurring, the procurement officer must review similar past procurement in which the same bidders or offerors have participated.

C. Resale Price Maintenance. The practice of resale price maintenance consists of an agreement between a manufacturer and a distributor or a dealer to fix the resale price of a supply. A procurement officer should consider the possibility that such an agreement exists where prices offered adhere to an established pattern, such as a published price schedule, and identical bidding occurs.

D. Sharing of the Business. Sharing of the business occurs where potential bidders or offerors allocate business among themselves based on the customers or the territory involved. Thus a procurement officer might discover that a potential bidder or offeror is not participating in a state procurement because a particular state agency, or a particular territory has not been allocated to such bidder or offeror by the producer or manufacturer.

E. "Tie-In" Sales. "Tie-in" sales are those in which a bidder or offeror attempts to sell one supply or service only upon the condition that the procurement officer purchase another particular supply or service.

F. Group Boycott. A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a state procurement until the boycotting competitors' conditions are met by the boycotted competitor or the state. The boycott of a competitor by other competitors may have an effect on the market structure or price of a supply, service, or major repair items needed by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

Chapter 25. Intergovernmental Regulations

§2501. Scope

A. This Part applies to cooperative purchasing and other cooperative activities authorized by R.S. 39:1702.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

§2503. Cooperative Purchasing Shall Not Adversely Affect Employees

A. No employee of any public procurement unit participating in any cooperative purchasing activity authorized by Part VII (Intergovernmental Relations) of the

Louisiana Procurement Code shall suffer any loss of salary, seniority, tenure, or pension rights, or be adversely affected as a result of any such activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

§2505. Cooperative Purchasing Agreement in Form of Open-Ended State Contract

A. Cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

B. Any agreement between the state and a local public procurement unit entered into pursuant to R.S. 39:1702 which provides that certain open-ended state procurement contracts shall be available to the local public procurement unit, shall also provide that:

1. the state shall conduct the procurement in compliance with the Louisiana Procurement Code;

2. when the local public procurement unit agrees to procure any supply or service under the state contract, its requirements for such supply or service shall be obtained by placing purchase orders against the appropriate state contract in accordance with the terms and conditions of such contract;

3. payment for supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

4. inspection and acceptance of supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

5. the state may terminate the agreement for failure of the local public procurement unit to comply with the terms of the contract or pay a contractor to whom the state has awarded an open-ended contract;

6. the exercise of any warranty rights attaching to supplies or services received by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit; and

7. failure of a local public procurement unit which is procuring supplies or services under a state contract to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not necessarily require the state or any other local public procurement unit to consider the default or to discontinue procuring under the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

§2506. LaMAS (Louisiana Multiple Award Schedule) State Contracts Based on GSA Prices

A. The State Central Purchasing Agency of the Division of Administration may establish state contracts based on GSA (General Service Administration) pricing when it has been determined in writing by the director of state purchasing that certain conditions are met, which shall become part of the procurement file.

B. Materials, supplies, or equipment shall not be purchased on a state contract based on GSA pricing at a price higher than the price of the same item listed on any available state purchasing contract.

C. Establishment of a state contract based on GSA pricing will only be considered when there is a valid business case.

D. State agencies shall not procure materials, supplies or equipment directly under a GSA contract. The State Central Purchasing Agency of the Division of Administration will:

1. be responsible for analyzing and determining the feasibility of establishing a LaMAS state contract based on GSA prices; and

2. issue procedures for establishment and utilization of this type of contract.

E. No use shall be made of a LaMAS contract without the participation of a Louisiana licensed dealer or distributor. Louisiana licensed dealers or distributors must meet the requirement of a resident business defined in R.S. 39:1591(6). Louisiana licensed dealers or distributors shall agree to:

1. Louisiana terms and conditions; and
2. provide written consent from the GSA contractor to extend current GSA pricing to the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 39:1702.A.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:2381 (November 2003).

§2507. Supply of Personnel, Information, and Services

A. Requests made to a public procurement unit by another public procurement unit or external procurement activity to provide or make available personnel, services, information, or technical services pursuant to R.S. 39:1706, shall be complied with only to the extent that the chief procurement officer determines that it is practical and feasible to do so in terms of personnel, time, and other resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

Chapter 29. Education

§2901. Department of Education Procurement

A. The Department of Education shall conduct the procurement of all supplies, services, and major repairs, as defined by the Louisiana Procurement Code, R.S. 39:1551 et seq., through the central purchasing agency of the Division of Administration. This rule does not extend to those items exempted in R.S. 39:1572.A(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1572.B.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 14:429 (July 1988).

Chapter 31. Conduct of Hearing Louisiana Procurement Code

§3101. Definitions

Aggrieved Person A person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the Louisiana Procurement Code and has or may have a pecuniary or other property interest in the award of the contract.

Candidate for Suspension or Debarment A candidate for suspension or debarment is a person, who in the opinion of the chief procurement officer has committed an action giving cause for suspension or debarment pursuant to R.S. 39:1672.C.

Commissioner The Commissioner of the Division of Administration.

Contractor A person who has been awarded a contract.

Hearing Officer The chief procurement officer or his designee who shall exercise such authority as is granted for the conduct of protests in accordance with the provisions of the Louisiana Procurement Code [Title 39:1551 et seq., Section 1671(B)].

Interested Person Any person who has submitted a bid in response to an invitation for bids, a request for proposals, or other solicitation issued under the Louisiana Procurement Code who has or may have a pecuniary or other property interest which may be affected by a determination made in a protest hearing.

Party As used herein, unless the content clearly indicates otherwise, is either a *contractor* or a *candidate for suspension or debarment* or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983).

§3103. Application

A. The following rules shall only apply to hearings held by boards of higher education and institutions under their jurisdiction in accordance with §§601, 1671, 1672, and 1673 of Title 39 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 9:210 (April 1983), amended LR 23:67 (January 1997).

§3105. Initiation of Hearing

A. Responsibility of Bidders and Offerors. A hearing held to consider the disqualification of a bidder or offeror shall be commenced with the giving of written notice issued by the chief procurement officer, the commissioners or head of a governmental body.

B. Protest of Aggrieved Person in Connection with the Solicitation, Award, or Issuance of Written Notice of Intent to Award. Any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing prior to the opening of bids. Protests with respect to the award of a contract or the issuance of written notice of intent to award a contract shall be submitted in writing within 14 days after contract award.

1. The written protest must state the issue(s) protested. The protest hearing is limited to the issues contained in the written protest unless there is a showing that an issue not mentioned ought to be examined in order to properly dispose of the matter, or, in the public interest, there is other good ground for consideration of other issues and evidence.

2. Upon receipt of a written protest in conformity with the preceding paragraph, the chief procurement officer shall cause to issue a written notice to the aggrieved person and shall also, issue a written notice to all interested persons.

C. Suspensions and Debarments. A hearing for a candidate for suspension or debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment shall be initiated by issuance of written notice thereof.

D. Contract and Breach of Contract Controversies. Hearings on controversies between the state and a contractor based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall commence with issuance of written notice by the chief procurement officer on his motion for reasons set forth in the notice or at the request of the contractor communicated in writing to the chief procurement officer and the head of the governmental body of the state utilizing the supplies, services, or major repairs under the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), amended LR 22:280 (April 1996).

§3107. Notice

A. The written notice required to be sent in order to commence a hearing within the foregoing section of these rules for the adjudicatory hearings provided for to parties, aggrieved persons, or interested persons who do not waive their rights shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted.

B. If the chief procurement officer is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, the chief procurement officer shall issue a more detailed notice prior to the date set for the hearing.

C. In addition to the requirements of the notice set forth above, the notice may contain a statement advising all parties, aggrieved persons, or interested persons as applicable that failure to participate in the noticed hearing shall serve to waive any and all further administrative remedies.

D. Whenever practical, the notice shall be served by return receipt certified mail. Where time or other factors render mail service impractical, the chief procurement officer may effect service by any other means reasonably calculated to communicate the written notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983).

§3109. Hearing; Record**A. Hearing**

1. An opportunity shall be afforded all parties, aggrieved persons, or interested persons to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

2. The hearing officer may, in his discretion, request written views from a governmental body which will be directly affected by the outcome of the adjudicatory hearing and give such weight to the submission as the facts and law require. A copy of such written submission shall be provided to all parties, aggrieved persons, or interested persons participating in the adjudicatory proceeding.

3. Informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

B. Record

1. The record shall contain:

- a. all pleadings, motions, intermediate rulings;
- b. evidence received or considered or a resumé thereof if not transcribed;
- c. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
- d. offers of proof, objections, and rulings thereon;
- e. proposed findings and exceptions;
- f. any decision, opinion, or report by the officer presiding at the hearing.

2. The hearing officer shall have all proceedings before him recorded electronically and may in his discretion, or shall upon written request of any party, aggrieved person, or interested person, cause to be made a full transcript of said proceedings.

a. The cost of a transcript shall be paid by the Division of Administration when the hearing officer elects upon his motion to transcribe the proceedings. In such event, any party, aggrieved person, or interested person requesting a copy shall be given a copy upon first paying the actual cost thereof or upon payment of the cost of a portion of the transcript if the request is for a particular portion of the transcript.

b. The cost of a transcript shall be paid by the party, aggrieved person, or interested person when a transcript is made at their request. Copies requested shall be paid for by the party, aggrieved person, interested person, or the hearing officer as the case may be.

3. Findings of fact made by the hearing officer shall be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983).

§3111. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information

A. Rules of Evidence

1. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties, aggrieved person, or interested persons will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the governmental agency of which the hearing officer desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

B. Official Notice. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within a governmental agency's specialized knowledge. Parties, aggrieved persons, or interested persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. A governmental agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Oaths and Affirmations. The hearing officer shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues. The hearing officer shall also have authority to raise issues not otherwise raised by persons party to a hearing where such an issue is pertinent to a proper disposition of the matter.

D. Subpoenas. The hearing officer shall have power to sign and issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party, aggrieved person, interested person, or governmental agency who wishes to subpoena the witness first deposits a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party, aggrieved person, interested person, or governmental agency who wishes to subpoena such witness as may be fixed by the hearing officer with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or give testimony, as required, the hearing officer may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

E. Depositions and Discovery. The hearing officer, governmental agency, or any party, aggrieved person, or interested person may take the depositions of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts

of record. Depositions so taken shall be admissible in the record of the hearing. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by hearing officer in accordance with the rules of evidence provided in these rules.

F. Confidential and Privileged Information

1. Records and documents, in the possession of a governmental body, the hearing officer, or any officer or employee, including conclusions drawn therefrom which are deemed confidential and privileged shall not be made available for adjudication proceedings and shall not be subject to subpoena by any person or other state or federal agency.

2. Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated, by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983).

§3113. Decisions and Orders of the Hearing Officer

A. If the subject matter of the hearing is not resolved, the hearing officer shall, within 14 days of the conclusion of a protest hearing, or within a reasonable time of the conclusion of a hearing to determine responsibility, suspension or debarment, or a controversy between the state and a contractor, issue a written decision stating the reasons for the action taken and informing the party, aggrieved person, or interested person of the right to administrative review and thereafter judicial review where applicable.

1. A copy of the decision or order shall be mailed or otherwise furnished the party, aggrieved person, or interested person immediately.

B. The decision of the hearing officer shall become final and conclusive unless the decision is fraudulent or the party, aggrieved person, or interested person adversely affected by the decision or order has timely appealed administratively to the commissioner.

1. The final decision of the hearing officer shall not be subject to the review of the commissioner when the decision is rendered in a proceeding to determine responsibility of a bidder or offeror. Notice of the right to judicial review of the final decision shall accompany service of the final decision.

C. A bidder or offeror who is disqualified shall have the right to request a rehearing before the hearing officer. This right must be exercised within 10 days of the date of receipt of the decision of disqualification. The grounds for rehearing shall be limited to the following:

1.a. the decision or order is clearly contrary to the law and the evidence;

b. the party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

c. there is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. there is other good ground for further consideration of the issues and the evidence in the public interest;

2. The request for rehearing on behalf of a bidder or offeror disqualified after hearing on his responsibility shall be in writing and shall set forth the grounds which justify a rehearing. In the event a rehearing is granted by the hearing officer, it shall be confined to the grounds upon which the rehearing was granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983).

§3115. Administrative Appeal to the Commissioner

A. The commissioner shall have authority to review and determine any appeal by a party, aggrieved person or interested person who has intervened in a hearing before the hearing officer from a determination by the hearing officer from an adjudication on a protest of a solicitation, award, or intent to award, a suspension or debarment, or a controversy between the state and a contractor.

B. Scope of Appellate Review by the Commissioner

1. An appeal to the commissioner authorized by R.S. 39:1681 and the foregoing provision shall be limited to a review of the record of the proceedings before the hearing officer and written briefs submitted by or on behalf of persons who have appealed.

2. A person seeking review by the commissioner of a decision by the hearing officer may, within the time limitations fixed herein below for appeals, raise by separate written documents:

a. the existence and discovery since hearing of new evidence important to the issues which he could not have with due diligence obtained before or during trial; or

b. the existence of issues not previously considered which ought to be examined in order to properly dispose of the matter. Upon receipt of such separate written document, the commissioner, should he deem the assertions well founded, may either remand the matter to the hearing office or grant a hearing to consider the assertions himself. In either event, whether the assertions are heard by the hearing officer or the commissioner, the evidence or submissions of said hearing shall be incorporated into the record and considered in the administrative appeal.

C. **Appeal of Protest Hearing.** An aggrieved person or an interested person who has participated in the proceedings before the hearing officer appealed from shall file an appeal to the commissioner within seven days of receipt of the decision of the hearing officer. The commissioner shall decide within 14 days whether the solicitation or award or intent thereof was in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. A copy of the decision of the commissioner on the appeal shall be mailed or otherwise furnished immediately to the aggrieved person or interested person who has appealed or otherwise participated in the appeal from the decision of the hearing officer. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the person adversely affected by the decision of the commissioner has timely appealed to the court in accordance with R.S. 39:1691.A.

D. **Appeal of Suspension or Debarment Hearing.** A party shall file his appeal with the commissioner from a suspension or debarment hearing within 14 days of the receipt of the decision of suspension or debarment from the hearing officer. The commissioner shall decide within 14 days whether, or the extent to which, the debarment or suspension was in accordance with the constitution, statute, regulations, and the best interests of the state and was fair. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person or any other party interviewing. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the debarred or suspended party has timely appealed to the court in accordance with R.S. 39:1691.B. The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under the section entitled "Procedure Upon Judicial Review" of this rule.

E. **Appeal of Contractor Controversy.** A party shall file his appeal with the commissioner within 14 days of the receipt of the determination under R.S. 39:1673.C. The commissioner shall decide within 14 days the contractor or breach of contract controversy. A copy of the decision shall be mailed or otherwise furnished immediately to the contractor. The decision of the commission on appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the contractor has timely appealed to the court in accordance with R.S. 39:1691.C. The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under §3119 "Procedure Upon Judicial Review."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983).

§3117. Judicial Appeal from Administrative Decisions

A. **Solicitation and Award of Contracts.** The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Such actions shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691.A shall be commenced within 14 days after receipt of the decision of the commissioner under R.S. 39:1683.C.

B. **Debarment or Suspension.** The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the constitution, statute, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691.B shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1684.C.

C. **Actions under Contracts or for Breach of Contract.** The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a contractor who contracts with the state, for any cause of action which arises under or by virtue of the contract for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691.C shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1685.C.

D. **Disqualification of Bidders or Offerors.** A bidder or offeror disqualified after a hearing conducted pursuant to R.S. 39:1601 shall have a right of appeal to the Nineteenth Judicial District Court. Any action for review of a hearing conducted pursuant to R.S. 39:1601 shall be commenced within 30 days after receipt of the hearing officer's decision or within 30 days of the receipt of a decision on an application for rehearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983).

§3119. Procedure upon Judicial Review

A. An appeal to the Nineteenth Judicial District Court for review of a decision of the commissioner shall be instituted within the time delays established in the preceding section entitled "Judicial Appeal from Administrative Decisions" by the filing of a petition. An appeal to the decision of a hearing officer in a hearing involving the responsibility of a bidder or offeror shall likewise be filed within the delay provided in the preceding section and shall be instituted by the filing of a petition.

B.1. The filing of the petition does not stay enforcement of a decision in proceedings involving responsibility of a bidder or offeror, suspension or debarment, or controversies between the state and a contractor. The commissioner may grant, or the Nineteenth Judicial District Court may order, a stay upon appropriate terms.

2. The filing of a petition shall stay progress of a solicitation or award of a contract unless the chief procurement officer makes a written determination that the awarding of the contract is necessary without delay to protect the substantial interests of the state. Upon such determination, no court shall enjoin progress under the award except after notice and hearing.

C. Review. The review shall be conducted by the Nineteenth Judicial District Court without a jury and shall be confined to the record. In case of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. There shall be no right of review by a trial de novo.

D. Judgment on Review. The court may affirm the decision of the commissioner or chief procurement officer, as the case may be, or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the agency;
3. made upon lawful procedure;
4. affected by other error of law;
5. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
6. manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge of the credibility of witnesses by first hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983).

§3121. Appeals

A. Review of a final judgment of the district court to the Court of Appeal for the First Circuit shall be taken as in other civil cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983).

Chapter 33. Vendors

§3301. Vendor Fees

A. An annual subscription fee of \$50 will be charged in-state vendors and \$100 will be charged out-of-state vendors to become eligible to be on a computerized state bid list. Failure to be on the computerized state bid list will only remove your company from automatically receiving bids. State purchasing will continue to advertise bids in accordance with required laws. The fee covers the fiscal year period July through June. For a preceding fiscal year, any payments received after April 1 through June 30 will be prorated as follows:

1. in-state vendors ~~C~~\$15; and
2. out-of-state vendors ~~C~~\$30.

B. This fee entitles the vendor to be on the bid list for one fiscal year, automatically receive all state purchasing bid solicitations in selected commodity categories, receive a *How to do Business with the State of Louisiana* book and includes registration fees for vendor seminars.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 12:833 (December 1986), amended LR 13:342 (June 1987), LR 17:660 (July 1991).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part I. Purchasing

Subpart 3. Equipment-Lease-Purchase Program

Chapter 51. General Provisions

§5101. Authority

A. The Division of Administration is hereby enacting the following rules and regulations in accordance with Act 758 of the 1985 Regular Session (R.S. 39:1761-1771).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 12:231 (April 1986).

§5103. Definitions

Applicable Purchasing Agency The Division of Administration except as provided in R.S. 39:1572.

Equipment Lease Purchase Contract The lease purchase contract in the form approved by the State Bond Commission and the Commissioner of Administration between the state and nonprofit lessor.

Exempt Agency Those agencies set out at R.S. 39:1572 which are not required to procure goods and services through the Division of Administration, Office of State Purchasing.

Lessee The state of Louisiana through the Division of Administration.

Nonexempt Agency Those agencies which are mandated by law to procure their goods and services through the Division of Administration, Office of State Purchasing.

Nonprofit Lessor or Lessor Public corporation or public trust organized pursuant to state law having for its beneficiary the state.

Procurement Period That period of time as established by the equipment lease purchase contract in which the state may procure selected equipment under the state equipment-lease-purchase program. Any equipment not purchased within this time period will be removed from said program.

Program The equipment-lease-purchase program of the state of Louisiana wherein a nonprofit lessor purchases and finances equipment to lease to the state with funds belonging to the nonprofit lessor, and upon the completion of payment of lease amounts the title of the selected equipment shall vest in the state.

Purchase Order A written agreement confirming all terms, conditions, delivery date and price acquired by bids received by state purchasing or exempt agency for item(s) on the selected equipment list.

Purchase Requisition A written request to procure equipment in accordance with law, rules and regulations from the selected equipment list by exempt or nonexempt agencies.

Release Order A written agreement wherein a using agency purchases an item on the selected equipment list from a state contract conforming with all terms, conditions, delivery date, and prices, which shall be issued by exempt or nonexempt agencies.

Selected Equipment Equipment, as determined by the applicable purchasing agency, and approved by the Division of Administration, which shall be the subject of a lease-purchase contract.

Selected Vendor A supplier, manufacturer, retailer, wholesaler, dealer, or other source for selected equipment which has been selected by the applicable purchasing agency pursuant to state law.

Trustee Bank The bank which the nonprofit lessor selects to administer the funds, make payments to selected vendors, accept payment from the state on the equipment-lease-purchase contract and which performs all the necessary and required functions for the administration of this program.

Using Agency That agency which will receive the selected equipment after it is procured and will be ultimately responsible for the lease payment under the equipment-lease-purchase contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 12:231 (April 1986).

Chapter 53. Procurement of Equipment

§5301. Appropriation Bills

A. An agency wishing to participate in the state equipment-lease-purchase program must provide the Division of Administration, Budget Office a list of equipment being requested. The equipment listing shall be on the standard budget request forms. These forms are to be submitted with the agency's budget request on December 5 each year. The Budget Office will review the request and make a funding recommendation. The Budget Office shall have the sole responsibility of determining which pieces of equipment will be recommended for this program and will notify the agency in the "Notification of Appropriation Letter" if such equipment is recommended for funding through this program.

B. Equipment purchased through this program shall not be included in the agency's appropriation but shall be accounted for separately. Acquisition cost of the equipment shall be reflected in future appropriations as lease purchase payments as set forth in §5315.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 12:231 (April 1986).

§5303. Capital Outlay Bill

A. An agency wishing to participate in the program for Capital Outlay equipment shall provide the Division of Administration, Budget Office a list of equipment being requested. The equipment listing shall be on the standard Capital Outlay request forms. These forms are to be submitted with the agency's Capital Outlay request by November 1 of each year. The Office of the Commissioner, Office of Facility Planning and Control and the Budget Office shall review the request and recommend funding. The Office of Facility Planning and Control shall notify the using agency of the equipment funded through this program. Acquisition cost of the equipment shall be reflected in future appropriations as lease-purchase payments as set forth in §5315.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:231 (April 1986).

§5305. Generation of Selected Equipment List

A. The Division of Administration shall compile a list of the equipment selected for acquisition under this program. This list is to be compiled from the items of equipment recommended by the Budget Office to appear in the agency's appropriation, in either the General Appropriation Bill, Ancillary Appropriation Bill and/or the Capital Outlay Bill. The list with the approximate purchase price shall be submitted to the nonprofit lessor selected to purchase the equipment. Upon approval by the legislature, the nonprofit lessor shall take the necessary steps to generate the revenue to procure the equipment contained on said list.

B. The Division of Administration, State Budget Office, shall notify the using agency in writing when funds are available for procurement of equipment under the program when the procurement for the items were from the Appropriation Bill, or the Ancillary Appropriation Bill. For those items which were contained in the Capital Outlay Bill, the Office of Facility Planning and Control shall notify the using agency of the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

§5307. Substitutions to the Equipment List

A. The Division of Administration within the procurement period, with the prior written approval of the Joint Legislative Committee on the Budget, may elect to

substitute one or more other items of equipment for such selected items on the equipment list, provided the inclusion thereof shall not cause the estimated aggregate purchase price to exceed the original estimated aggregate purchase price, and any substitution made must be for equipment in the same category group.

B. The using agency requesting such a substitution shall make such request in writing to the Division of Administration prior to the termination of the procurement period stating the item, estimated cost, and economic life of the item to be substituted and the item being substituted, and the reason such substitution is being requested. The Division of Administration shall notify the using agency of its decision in writing, in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

§5309. Procurement of the Selected Equipment

A. The using agency shall be responsible for procurement of the equipment acquired under the program. Such procurement shall take place only after the using agency is notified in writing by the Division of Administration of funding by the nonprofit lessor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

§5311. Processing Procurement Request

A. In procuring equipment for the program, using agencies shall adhere to all laws, executive orders, rules, regulations, policies and procedures governing the purchase of goods and services by the using agency. The procurement of equipment by the using agency shall not be construed to change, affect, increase, or in any fashion relieve the agency of the requirements of any laws, rules, executive orders, regulations, policies or procedures relative to the procurement of goods and services by the respective agency except as follows.

1. Release Order. The using agency shall issue release orders for items on applicable state contracts and comply with all requirements except as follows.

a. Include the following statement in the description portion of the release order, THIS ORDER WILL BE PAID BY LPFA FUNDS. All invoices shall be remitted to the user agency's invoice address.

b. Invoice To shall be made out to the Louisiana Public Facility Authority, Four United Plaza, Suite 100, 8555 United Plaza, Baton Rouge, Louisiana 70809.

c. Coding Block Delete all coding and insert in the coding block the following: NON-FACS-_____ (General Appropriations Act Number _____, and year, Capital Outlay Act Number _____, and year, or Ancillary Appropriations Act Number _____, and year). LPFA LEASE PURCHASE PROGRAM.

d. Distribute photo copies of number 1 white page of release order as follows:

- i. State Accounting Office Agency Services; and
- ii. Office of Risk Management.

2. Purchase Requisition. Using agencies exempt from centralized purchasing through the Office of State Purchasing under R.S. 39:1572(a) or (b), shall conduct the bidding for applicable equipment under the program. Such bidding shall be in accordance with all laws, executive orders, rules, regulations, policies and procedures, including the requirements contained herein. All nonexempt using agencies must submit to the Office of State Purchasing an applicable purchase requisition which includes complete specifications for the item of equipment which complies with all purchase requisition requirements and procedures with the exception and addition of:

a. bid proposals must include a requirement that the bidder specify the manufacturer's maintenance requirements and the warranty period offered;

b. include the following statement in the description portion of the release order, THIS ORDER WILL BE PAID BY LPFA FUNDS. All invoices shall be remitted to the user agency's invoice address;

c. Invoice To shall be made out to the Louisiana Public Facility Authority, Four United Plaza, Suite 100, 8555 United Plaza, Baton Rouge, Louisiana 70809;

d. Coding Block Delete all coding and insert in the coding block the following: NON-FACS-_____ (General Appropriations Act Number _____, and year, Capital Outlay Act Number _____, and year, or Ancillary Appropriations Act Number _____, and year). LPFA LEASE PURCHASE PROGRAM.

3. Purchase Orders. The Office of State Purchasing, or the exempt agency shall only issue purchase orders after bids are opened and evaluated and it has been determined that the lowest responsive and responsible bid is not in excess of the amount approved for procurement of said equipment as reflected on the selected equipment list. In the event all bids are in excess of the estimated cost reflected on the selected equipment list an award shall not be made unless written approval is received from the Division of Administration, State Budget Office. If the expenditure of additional funds is not approved, written cancellation of the solicitation shall be processed. Such cancellation notice shall contain the reason for cancellation.

a. Purchase orders used to procure equipment under the program must comply with all purchase order requirements and procedures with the exception and addition of:

i. include the following statement in the description portion of the release order, THIS ORDER WILL BE PAID BY LPFA FUNDS. All invoices shall be remitted to the user agency's invoice address;

ii. Invoice To shall be made out to the Louisiana Public Facility Authority, Four United Plaza, Suite 100, 8555 United Plaza, Baton Rouge, Louisiana 70809;

iii. Coding Block Delete all coding and insert in the coding block the following: NON-FACS-_____ (General Appropriations Act Number _____, and year, Capital Outlay Act Number _____, and year, or Ancillary Appropriations Act Number _____, and year). LPFA LEASE PURCHASE PROGRAM;

iv. distribute the photo copies of number 1 white page of purchase order as follows:

- (a). State Accounting Office Agency Services;
- (b). Office of Risk Management.

b. All purchase orders and release orders for procurement of equipment under the program shall be remitted to the Division of Administration, Office of State Budget, except for Capital Outlay items which shall be submitted to the Office of Facility Planning and Control, by the appropriate purchasing unit of the user agency. The Division of Administration, Office of the State Budget, or the Office of Facility Planning and Control when applicable, shall complete Section 1 of the Certificate of Approval and Acceptance, evidencing approval thereof, and attach said certificate to the applicable purchase or release order.

B. The using agency shall complete Section 2 of the Certificate of Approval and Acceptance and remit said certificate to the trustee bank as required in §5313.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

§5313. Delivery and Acceptance of Equipment

A. The using agency shall be responsible for accepting delivery of the equipment from the vendor and inspecting the equipment to determine if the equipment complies with the specifications and is in satisfactory condition. If an acceptance period is involved a certificate of acceptance shall not be transmitted to the trustee bank until such time that a successful acceptance period has been concluded.

B. Upon acceptance, the using agency shall transmit to the trustee bank the following.

1. Original Invoice. The original invoice must always be submitted unless it has been lost. In this case, a copy will be accepted only if it has been signed and dated and "A True Certified Copy of the Original Invoice" appears on the face of the invoice.

2. Pink Copy of Purchase or Release Order. When submitting a complete payment request (when all items on the purchase order are being paid for at one time), the number 2 pink copy must be attached. When submitting a partial payment request, a photocopy of the number 2 pink copy of the purchase order must be attached to the invoice. Submit the original number 2 pink copy when the final payment is requested.

3. **Receiving Report.** The receiving report must be completely filled out indicating the item(s) received, quantity of each item, date received, and the authorized receiving agent's signature. When a purchase order is paid in partials, the final payment request must show where all the merchandise has been received, highlighting the item(s) submitted for payment at that time.

4. **Equipment List.** Submit a copy of the page of the selected equipment list for which the item(s) apply. Highlight on the page the item(s) and amount for which payment is requested.

5. **Certificate of Approval and Acceptance.** The certificate must adhere to the format as set out in Attachment A to these rules and regulations. Section 1 of the certificate shall be approved by the Division of Administration, Office of the State Budget, or Office of Facility Planning and Control, whichever is applicable, and Section 2 of the certificate shall be completed by a duly authorized official of the using agency prior to being remitted to the trustee bank.

6. **Title Document.** When applicable, include documents to place legal title of the item or piece of equipment with the Louisiana Public Facility Authority.

C. Payment will not be processed by the trustee bank unless each of the above described documents are remitted with the invoice. All incomplete packages shall be returned to the using agency by the trustee bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

§5315. Payment for Selected Equipment

A. The trustee bank for the nonprofit lessor shall disburse the necessary funds for the purchase of the equipment. Thereafter, the Division of Administration as lessee, shall be responsible for remitting the required lease payments to the trustee bank.

B. The lease payments for items of equipment which were scheduled to be purchased by General Fund^CDirect will be appropriated directly to the Division of Administration in a special supplemental appropriation.

C. The lease payments for items of equipment which were scheduled to be purchased with federal funds, dedicated funds, or self-generated funds will be appropriated to the respective using agency to be transferred to the Division of Administration for the required payments to the trustee bank.

D. The lease payments for items of equipment which were scheduled to be purchased through the Capital Outlay Bill will be appropriated directly to the special appropriation under the Division of Administration.

E. The trustee bank will provide to the Division of Administration prior to January 1 of each year, a schedule listing the amount of lease payments required for each item of equipment. The Division of Administration shall invoice

the using agencies for lease payments funded by means other than the State General Fund^CDirect no later than 30 days prior to the actual lease payment. For lease payments funded by the State General Fund^CDirect, the Division of Administration shall issue a memo invoice to the respective using agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

§5316. Insurance on Equipment

A. During the term of the lease purchase contract applicable to the individual pieces of equipment, the using agency shall maintain at its expense property insurance on the equipment for the replacement value of the equipment or the remaining outstanding lease payments owed by the using agency for said equipment, whichever is greater. The policy shall contain a loss payable clause as to make losses payable to the Division of Administration as lessee, the Louisiana Public Facility Authority as owner, or such other nonprofit corporation owner as may be applicable, the letter of credit bank, and the trustee bank, as their respective interest may appear. Using agency shall contact the Division of Administration prior to insuring said equipment to ascertain the names of said beneficiaries and their respective interest.

B. The policy shall also contain any and all additional requirements of the applicable equipment lease-purchase contract, by and between the Division of Administration and the nonprofit lessor. Insurance coverage shall be requested through the Office of Risk Management and such request shall be made no later than 90 days prior to the estimated date of receiving the equipment.

C. The using agency shall furnish the Division of Administration, State Accounting Office, Accounting Services, duplicate certificates of insurance evidencing the required insurance coverage. The Division of Administration, State Accounting Office, Accounting Services, shall send the certificate of insurance to the nonprofit lessor and the trustee bank as required by the applicable lease-purchase contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

§5318. Maintenance on Equipment

A. The using agency shall at all times during the lease, at using agency's expense, maintain, preserve and keep the equipment in good repair and working order in full and complete accordance with the selected vendor's specifications. The using agency shall furnish proof that the equipment is being maintained in such a fashion, upon request, to the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

§5320. Title to the Selected Equipment

A. Title to the selected equipment shall be retained by the nonprofit lessor until such time as the equipment is paid for in accordance with the equipment lease-purchase contract, at which time title shall be transferred to the using agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

§5322. State Master Listing of Inventory

A. The using agency through its bonded property manager shall enter and maintain the equipment on the State Master Listing of Inventory (AM014) with an acquisition code of 6 (loan) and the classification code of 5262550 (LPFA Equip. CD of A) in the Classification Code column during the term of the lease. The using agency shall use its agency number assigned for property control and shall assign the respective tag number, if applicable. The acquisition date shall be the date the using agency receives the equipment. The acquisition cost shall be the actual cost of the equipment when purchased by the trustee bank. The item of property shall be fully and properly described in the Make and Model columns so as to facilitate identification during each annual inventory of movable property by the using agency.

B. Upon transfer of title of the equipment to the state, at termination of the lease term or at any time an option to purchase is elected, the acquisition code shall be revised to 0 and the identification code of 526255 shall be changed to the proper classification code for the piece of equipment in question. All other requirements of entering and maintaining the equipment on the State Master Listing of Inventory shall be as set forth in the State Property Control rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:234 (April 1986).

§5324. Taxes

A. The purchase of the selected equipment by the nonprofit lessor are exempt from state and local sales tax to the same extent as the state would be if the state was making the actual procurement, all in accordance with R.S. 39:1765.B.

Attachment "A"

American Bank and Trust Company
Four United Plaza
8555 United Plaza Boulevard, Suite 302
Baton Rouge, Louisiana 70809

Attention: J. Michael Brouillette
Vice President and Trust Officer

RE: Louisiana Public Facilities Authority Revenue
Bonds (State of Louisiana Equipment Leasing Program)
Series 1985

Gentlemen:

§1. TO BE COMPLETED BY THE DIVISION OF ADMINISTRATION:

This is to advise you as Trustee for the above referenced issue of bonds that the equipment described in purchase/release order number _____, attached hereto, has been received and accepted by the applicable purchasing agency and approval is hereby given for payment of the purchase price of said equipment.

APPROVAL:

Authorized State Representative Date

§2. TO BE COMPLETED BY USING AGENCY:

Also be advised that the using agency certifies the following applicable information:

The equipment is being insured under the state's self-insurance program, or if under commercial coverage a copy of the binder is attached.

The equipment shall be located in the parish of _____. The serial number (if available) is No. _____. The state's inventory control number (if applicable) assigned by the using agency is _____.

Also attached are the title documents necessary to place legal title in the Louisiana Public Facilities Authority to the Item of Equipment which is to be purchased upon payment to the vendor of the purchase price thereof.

Agency Comments _____

ACCEPTANCE:

Authorized Using Agency Official Date

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:234 (April 1986).

Chapter 55. Procedures for Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance

§5501. General

A. This Chapter describes the procedures that all agencies in the Executive Branch must follow for the procurement of Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance. Situations not covered by these rules may be found in the general statutes and rules and regulations of the Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:2378 (November 2003).

§5503. Procedures for Procurement of Information Technology Hardware

A. This Section describes the information that all agencies in the Executive Branch must furnish when seeking approval of the Office of State Purchasing for the procurement of information technology hardware including installation with a cost exceeding the agency's delegated purchasing authority. Information technology hardware, for the purpose of this Section, is defined as any electronic data processing device including but not limited to central processing units, memory, peripheral devices, unit record equipment, data communications equipment, mini-computers and peripherals, graphics equipment including digitizers and plotters, optical scanning equipment, and shared logic word processing equipment, printers, multifunctional devices, and scanners. Equipment that does not fit into any of the above categories will be handled on a case-by-case basis and the agency must contact the Office of State Purchasing for a ruling on the justification required.

B. This Section does not apply to acquisitions from State Brand Name Contracts. Terms and conditions for Brand Name Contracts may contain additional procedures that an agency must follow. However, an approved IT-10 is needed for all IT procurements in excess of \$100,000.

C.1. For requests not covered by an existing contract, the following should be provided to the Office of State Purchasing to avoid delays in approval:

- a. a general description of the mission to be accomplished using the requested equipment;
- b. a detailed list of the proposed equipment, including quantities and estimated costs for lease, purchase, rental, maintenance, etc;
- c. an approved IT-10 form with all requests for procurements in excess of \$100,000.

2. The Office of State Purchasing may require additional information or justification, as it deems appropriate for any particular procurement request.

D. Each agency contemplating a procurement greater than the agency's delegated purchasing authority shall, upon definition of the preliminary functional requirements, submit a draft solicitation to the Office of State Purchasing. If the procurement exceeds \$100,000, the Office of State Purchasing shall schedule a Procurement Support Team (PST) meeting. The procurement support team participation may include assistance in finalizing the solicitation. The procurement support team participation must include, as a minimum, assistance in evaluation of bids or proposals and negotiations of contract terms (if applicable).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2378 (November 2003).

§5505. Procedures for the Procurement of Information Technology Software

A. This Section will describe the procedures that all agencies in the executive branch must follow when seeking to acquire information technology software.

B. Information technology software, for the purpose of this Section is defined as any program or series of programs offered commercially to computer installations.

C. If the cost of the information technology software including modifications, installation integration, training for the total project plus maintenance and support services, for a 12 month period to be acquired is under \$100,000, it is deemed to have the advance approval of the Office of State Purchasing and shall not be for a price greater than the vendor's published price.

1. The agency must include in the procurement file a list of all known information technology software packages investigated which claim to accomplish the required task. Name each investigated, its total cost, and the rationale for selection or rejection.

2. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software (including modifications, installation integration, training, etc.), with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology software with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software procurements of \$100,000 or greater will be competitively obtained through and ITB, RFP or through an OIT pricing agreement administered by the Office of State Purchasing.

3. Information technology software procurements of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

4. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2378 (November 2003).

§5507. Procedures for the Procurement of Information Technology Hardware Maintenance

A. This Section will describe the procedures that all agencies in the executive branch must follow when seeking to acquire information technology hardware maintenance.

B. For purposes of this Section, information technology hardware maintenance consists of remedial maintenance, preventative maintenance, replacement parts, labor and engineering changes necessary to keep information technology hardware in good working condition.

C. Procurements for information technology hardware maintenance under \$100,000 may be handled non-competitively and are deemed to have the advance approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology hardware maintenance with a total cost greater than \$100,000 whenever possible.

1. Information technology hardware maintenance over \$100,000 may be procured non-competitively from the original equipment manufacturer (OEM) if the maintenance is for mission critical equipment (such as mainframes, mainframe peripherals, enterprise servers, or network backbone components). The agency must submit a letter of justification signed by the head of the agency or his designee to the Office of State Purchasing.

2. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology hardware maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

3. Information technology hardware maintenance not covered in Paragraph D.1 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB), or request for proposal (RFP) process.

4. Information technology hardware maintenance of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2379 (November 2003).

§5509. Procedures for the Procurement of Information Technology Software Maintenance

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software maintenance.

B. For the purposes of this Section, information technology software maintenance includes on-site, telephone and/or on-line troubleshooting, installation assistance, basic usability assistance, etc. Information technology software products and technologies to be covered include operating systems, application software and systems, application software, and systems and network management software, tools and utilities.

C. Procurements for information technology software maintenance under \$100,000 may be handled non-competitively and are deemed to have the advance approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software maintenance with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology software maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software maintenance in which the software vendor is the only authorized entity to provide product fixes, patches, updates, or upgrades can continue to be handled non-competitively in accordance with R.S. 39:199.D. A letter from the information technology software vendor substantiating the above information is required.

3. Any other type of information technology software maintenance not covered in Paragraphs D.1 or D.2 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB) or request for proposal (RFP) process.

4. Information technology software maintenance with a cost of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2379 (November 2003).

§5511. Procedures for the Procurement of Information Technology Software Support Services

A. This Section will describe the procedures that all agencies in the executive branch must follow when seeking to acquire information technology software support services.

B. For purposes of this Section, information technology software support services include capacity planning, performance analysis, on-site troubleshooting, custom modifications, etc.

C. Procurements for information technology software support services under \$50,000 may be handled non-competitively and are deemed to have the advance approval of the Office of State Purchasing. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. Procurements shall not be artificially divided to circumvent the \$50,000 threshold.

E. Information technology software support services of \$50,000 or greater must be procured using the Consulting and Support Services Agreement (CSSA) or the request for proposal (RFP) process in accordance with R.S. 39:1481 et seq. (Office of Contractual Review).

F. Information technology software support services of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

G. It is the state's intent to compete information technology software support services with a total cost of \$50,000 or greater whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2379 (November 2003).

§5513. Procurement Support Team Operations**A. Procurement Support Team Composition**

1. A procurement support team (PST) shall be formed in accordance with the procedures defined herein for every information technology contract in an amount \$100,000 or greater for the procurement of information technology hardware, hardware maintenance, software, software maintenance, and software support services. All contracts shall be subject to the review and approval of other agencies as required by statute or regulations. Purchase release orders issued pursuant to a direct order contract or a brand name contract shall not constitute a contract for purposes of these procedures. The formation of a procurement support team shall be accomplished by the Office of State Purchasing and shall include one or more representatives from each of the following: the Office of State Purchasing; the Legislative Legal Staff; the using agency initiating the procurement action; and the Legislative Fiscal Office. The Office of

Information Technology will provide technical staff to assist the Office of State Purchasing and the procurement support team.

2. At least two members of each procurement support team shall have formal training in contract negotiations. The Legislative Fiscal Officer, the speaker of the House of Representatives and the president of the Senate (jointly), and the head of the Purchasing Agency (or his designee), shall each designate in writing to the Office of State Purchasing the names of a primary and an alternate team member. It shall be the responsibility of each named agency to keep the Office of State Purchasing advised of any changes in designated individuals.

3. The individual agencies represented on procurement support teams will have the following primary responsibilities. These responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of State Purchasing.

a. Legislative Fiscal Office. The Legislative Fiscal Office shall have the primary responsibility for the analysis of solicitations and review of funding procedures and certification of specific appropriation for the purpose prior to the final contract award.

b. Legislative Legal Staff. The Legislative Legal Staff shall have the primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, review to ensure compliance with statutes and regulations, and legal negotiations.

c. Office of State Purchasing. The Office of State Purchasing shall have primary responsibility for insuring compliance with procurement procedures and regulations, the drafting of solicitations, and the evaluation of bids and proposals.

d. The Procuring Agency. The procuring agency shall have primary responsibility for the determination of compliance of bids or proposals with the functional requirements, and for all management decisions at each phase of the procurement process.

4. The Office of Information Technology shall provide technical staff to assist the Office of State Purchasing and the procurement support team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, developing the structure and content of solicitations, and evaluation of bids or proposals, as requested by the Office of State Purchasing.

B. Procurement support team Involvement. The procurement support team participation may include assistance in finalizing the solicitation. Procurement support team participation must include, as a minimum, assistance in evaluation of bids and proposals, and negotiations of contract terms (if applicable). Assistance shall consist of reviewing the evaluation process and recommendation of award. Procurements requiring this level of support will involve the active participation of all of the members of the procurement support team as a unit.

1. The Office of State Purchasing, pursuant to the guidelines established therein, shall be responsible for convening a procurement support team if the procurement is \$100,000 or greater. The Office of State Purchasing will designate the team leader.

2. At least four members, one from each office designated, must be present to constitute a quorum.

3. There will be at least one meeting during the procurement process. Each member of the procurement support team must assist in the evaluation of bids or proposals, and negotiation of contracts (if applicable). The procurement support team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. This review must be indicated by the signature of each team member on the procurement support team review form, which is maintained by the Office of State Purchasing. In the event a team member indicates acceptance or concurrence of any activity, and the team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual team member must submit to the team leader written reasons for their actions. The team leader shall file these documents in the final activity file.

4. In situations where formal negotiations with prospective vendors or a successful bidder or proposer are appropriate, such negotiations will be conducted by a negotiation team appointed by the procurement support team leader. One member of the negotiating team will be designated as lead negotiator. The results of such negotiations will, of course, be subject to all statutorily required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in contract negotiations.

5. After the procurement process has been completed, one copy of the documentation related to the procurement will be retained on file by the Office of State Purchasing.

6. The Office of State Purchasing shall have final statutory approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2380 (November 2003).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Subchapter A. Procedure Manual

§101. Condition of the Contract

A. The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 1985 Edition, herein referred to as the "procedure manual" or the "manual" and any amendments thereto, as published by Facility Planning and Control, shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985).

§103. Definitions

Available for Construction (AFC) The actual amount of funds available for awarding the construction contract(s).

Consultants Individuals or organizations engaged by the owner or the designer to provide professional consultant services complementing or supplementing the designer's services. As applicable, consultants shall be licensed to practice in accordance with laws of the state of Louisiana. The owner shall engage or have the designer furnish as part of the designer's services the services of consultants which are deemed necessary for the project. Normal consultants are architects, landscape architects, civil, structural, mechanical and electrical engineers, etc., compensation for which is included in designer's basic fee. Special consultants are those, other than the above, which the owner may approve as required for the project to perform special services and for which compensation will be in accordance with §109.C.

Designer A person or organization professionally qualified and licensed to practice architecture, engineering or landscape architecture in accordance with the laws of the state of Louisiana, who is to perform basic services for the project, as named in the contract.

Owner The State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the commissioner of administration or the designated representative, Facility Planning and Control.

Project A Capital Outlay Project for which funds have been appropriated or other public government project for which funds are available, as specifically defined in the program attached to and stated in the contract between owner and designer.

User Agency The agency, department, division, board or institution which will be the principal user of and for which the facility is being designed and constructed, as named in the contract. Where reference is made hereinafter to the *user agency*, it will refer to both the "umbrella" and "local" entities of the department, board, agency, division, etc. (Examples: The LSU Board of Supervisors and the Department of Health and Human Resources are "umbrella" using agencies and "local" using agencies such as LSU-Alexandria and Pinecrest State School are under their respective jurisdiction and administration).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985).

§105. Owner-User Agency Responsibilities

A. The owner's designated representative shall be Facility Planning and Control. The user agency shall designate a representative authorized to act in its behalf with respect to the project.

B. After selection of the designer and prior to signing of the contract, the owner shall furnish to the designer the preliminary program, as described below, and a statement of the funds available for construction (AFC).

C. After the contract is signed by the owner, the owner shall schedule and hold a pre-design conference at the Office of Facility Planning and Control or at a location designated by the owner. This conference shall be attended by the designer and representatives of the owner and user agency.

1. The purpose of this conference shall be to initiate a general review and discussion of the project, including, but not limited to, adopting or confirming the following:

- a. the preliminary program defining:
 - i. the type of usage, number and sizes of spaces required;
 - ii. adjacency considerations;
 - iii. the type and number of people using the facility; and
 - iv. the activities to be held in the facility;
- b. the location of the facility, and relevant site information;
- c. the funds available for construction (AFC) and the designer's fee;

d. the time schedule outlining anticipated completion dates of designated phases as described in §113 hereinafter and the anticipated period of construction. The time schedule for planning phases shall commence with the date of the pre-design conference and shall continue until delivery of all construction documents to the owner complete, coordinated and ready to bid. The number of calendar days in the time schedule shall take into account review periods agreed to between designer and owner;

e. a detailed review of the latest "Instructions to Designers" and the bidding and construction contract forms as described in §113.A.4.a.iii hereinafter, which will be given to the designer prior to his signing the contract, and the compliance with which shall be a part of the designer's obligation under the contract, including any revisions made by the owner and agreed to by the designer.

2. The owner shall have prepared, at the owner's cost, by a registered land surveyor, a topographical survey of the site including structures, roads, walks, and utilities, when necessary. The owner will contract for and pay for geotechnical services as described in §113.A.1.d hereinafter. At the owner's request, the designer shall outline the scope of the above services and obtain one or more proposals for each of these.

D. The owner and the user agency shall examine all documents submitted by the designer and shall render decisions pertaining thereto, to avoid unreasonable delay in the progress of the designer's services.

E. The owner will select a testing laboratory to perform all required tests during construction, and will contract for and pay for all such testing services.

F. The owner shall provide record construction documents of existing buildings or facilities for renovation or addition projects, when those are available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985).

§107. Construction Budget (AFC)

A. The construction budget is the amount of funds available for construction (AFC) of the project as fixed by the owner and stated in the contract between owner and designer.

B. The designer shall be responsible for designing the project so that the base bid does not exceed the funds available for construction. The use of any alternate bids must be approved by the owner.

C. At the completion of the program completion phase, as stated hereinafter in §113, the designer shall determine whether the funds available for construction are realistic for the project when compared with the completed program. At this point, or at any other submissions of probable construction cost by the designer, if such probable construction cost is in excess of funds available (AFC), the owner shall have the option to:

1. instruct the user agency to collaborate with the designer to revise the program to be within the funds available for construction; such program revisions to be done without additional compensation to the designer, except as provided in §113.C.4, hereinafter;

2. provide additional funds to increase the funds available for construction (AFC); or

3. abandon or suspend the project.

D.1. When the lowest bona fide base bid exceeds the amount available for construction, the owner shall have the option to:

a. have the designer, without additional compensation, modify the construction documents as required in order to rebid the project to be within the amount available for construction;

b. provide additional funds to award the construction contract; or

c. abandon the project.

2. The lowest bona fide base bid is defined as the lowest base bid submitted by a licensed contractor, and not withdrawn in accordance with R.S. 38:2214 (Act 111 of 1983), which complies in every respect with the bidding requirements of the contract documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985).

§109. Compensation

A. Compensation to be paid designer for services and reimbursable expenses shall be as follows.

1. The fee for basic services, as described in §113 hereinafter, shall be calculated as the product of the fee percentage and the amount of the contract award, including any awarded alternates. The fee percentage shall be computed by the formula:

$$\text{FEE PERCENTAGE} = \frac{42.75}{\text{Log Contract Award}}$$

a. Until a contract award is made, an interim fee, to be used for making progress payments to the designer, shall be calculated as the product of the funds available for construction (AFC) and the fee percentage computed by the formula:

$$\frac{42.75}{\text{Log AFC}}$$

b. When a contract award has been made and the final fee computed as described above, payments to the designer shall be adjusted to this final fee, either upward or downward.

2. Compensation to be paid the designer on the interim fee basis shall remain constant until a contract award is made except when the owner adjusts the AFC prior to receipt of bids and the designer's contract is amended to reflect the new AFC and the resultant interim fee.

3. Compensation to be paid the designer shall be appropriately modified for certain projects as follows.

a. A renovation factor of up to 1.25, to be established and set by the owner for each individual project, will be multiplied by the fee percentage to arrive at the fee for renovation projects, when determined by the owner to be justified. This fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The renovation factor will be set in proportion to the additional work anticipated by the owner. Simple building additions will receive lower factors than full building renovations. The renovation factor will not be applied to reroofing projects, except in unusual circumstances.

b. On roofing projects, an addition may be made to the basic fee for full-time inspection services during construction.

c. Duplicated work factor shall be subject to negotiation between the owner and designer on an individual project basis.

d. Multiple Contracts. If the owner determines that the best interest of the project is served by bidding and constructing the project under two or more separate contracts, the fee shall be established for each portion by application of the formula in Subsection A above.

e. If a project consists of more than one element, to be bid and constructed under one contract, then the AFC to be used in computing the fee under the formula in Subsection A above shall be the sum of the AFC's of each element.

f. Prefabricated Buildings. A fee to be established and set by the owner for each individual project, not to exceed that stated in Subsection A above.

B. Payment to the designer for additional services, defined in §113.C, shall be made on the basis of designer's direct personnel expense for performing such services multiplied by a factor of 3.0.

1. *Direct Personnel Expense*—The normal, straight-time direct salaries of all the designer's personnel, except principals, engaged in the project (technical but not clerical). This shall also include the direct salaries of designer's consultants involved in the additional services.

2. On signing the contract the designer shall submit, for the owner's approval, a schedule of principals with an hourly rate for each and such hourly rate shall reflect the total compensation for principals' time when required for additional services, without application of the multiple.

3. Routine change orders which involve a small amount of effort will not involve extra compensation. Before the designer prepares a change order for which he feels he is entitled to extra compensation due to the extra effort involved, he shall so notify the owner and secure owner's approval to proceed with the change order. When final payment is made to the designer, all such change orders will

be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the contract award by the amount of change orders that qualify for additional fee as described above.

4. Designer shall prepare change orders caused by errors or omissions of the designer without additional compensation. If the error or omission results in damage to the owner, designer may be required to pay for the construction cost of such change orders or a portion thereof, as determined by owner.

5. Preparation of documents required for change orders for any cause shall not be started without owner's prior written approval.

C. Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the designer, his employees or his professional consultants in the interest of the project as directed and authorized by the owner in writing prior to their incurrence.

1. The designer shall pay for the cost of printing construction documents for the owner's and user agency's use and for regulatory agencies' approvals. The owner will reimburse the designer the cost of printing and distribution of all other sets of construction documents, over and above the amount of the deposits on same retained by the designer. The plan distribution and deposits will be as described in the "Instructions to Designers." This will include necessary sets for the contractor to construct the project.

D. Designer will be paid for prolonged contract administration and inspection of construction should the contract time, as may be extended, be exceeded due to no fault of the designer and liquidated damages are recommended by the designer. The amount of such payment shall be computed by dividing 20 percent of the basic total fee by the number of days construction time, as extended, and multiplying by the number of days of liquidated damages recommended by the designer.

E. Liquidated Damages. When the designer exceeds the established time schedule, as described in §105.C.1.d, including any extensions of time approved by the owner, then the amount of the fee shall, as liquidated damages, be reduced by an amount to be determined by the owner or as stated in the advertisement for designer's selection, for each working day past the original or extended date that the designer has not delivered all construction documents to the owner complete, coordinated and ready to bid. Completeness will be determined by the owner as described in §111.A.2 and §113.A.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985).

§111. Payments to the Designer

A. Payments on account of designer's services shall be made as follows.

1. Basic Services

a. Upon satisfactory completion of all basic services for each phase as described in §113, submission of all documents to the owner and upon the owner's and user's approval of same, which approval shall not be arbitrarily withheld, payment for the following phases of the designer's services will be made in one lump sum (with the exception of the construction documents phase as described below in Paragraph 2); such payments shall be up to the following percentages of the designer's fixed fee, either interim or final, as applicable, which percentages are cumulative.

Program completion phase	5 percent
Schematic design phase	15 percent
Design development phase	30 percent
Construction documents phase	70 percent
Bidding and contract phase	75 percent

b. Monthly in proportion to the contractor's certificate for payment for the following phase.

Construction phase	95 percent
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c. Upon satisfactory completion and furnishing required documents to the owner for the following phase.

Construction close-out phase	100 percent
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2. A partial payment for the construction documents phase shall be made when the designer has completed 100 percent of the construction documents and has submitted these to the owner, the user agency, and the other required statutory agencies and the owner determines by inventory check and conformity with §113 that all required documents have been submitted, and are complete, coordinated and ready to bid, then the designer shall be entitled to a payment of 70 percent of the fee for the construction documents phase. Should the owner's approval of the construction documents not be issued within 45 days of submittal due to no fault of the designer, then the designer shall be paid an additional payment of 20 percent of the fee for the construction documents phase. The balance of the fee for this phase will be due upon the completion of review by owner and user, when corrections have been made, and when the project is approved for bidding. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the construction document phase may be made by agreement between the owner and the designer.

B. Payments on account of designer's additional services and for reimbursable expenses shall be made on submission of designer's invoices with supporting data, and their written approval by owner and user agency and issuance of an amendment to the contract covering such services.

C. Payments to the designer on termination, abandonment or suspension shall be made in accordance with §§117 and 119, hereinafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:851 (September 1985), LR 13:656 (November 1987).

§113. Designer's Services

A. Basic Services. The designer's basic services consist of the phases described below and include the normal services of the designer and normal complementary or supplementary services of his consultants, and any other services included in the contract. Review documents of each phase shall be submitted to the owner and to the user agency for their approval. In addition, for the construction documents phase, review documents shall be submitted to regulatory agencies designated by the owner or required by law, for their approvals. Designer shall not proceed to any subsequent phase until the requisite written approvals are received and until authorized by the owner in writing to so proceed. All statements of probable construction cost shall be adjusted to the anticipated bid date of the project. The designer shall be responsible for compliance with all applicable codes as referenced in Chapter II. All items not specifically covered by codes shall be designed in accordance with the standards established by accepted professional groups or by industry standards for that specific item of work.

1. Program Completion Phase

a. After the initial pre-design conference the designer shall meet and work with the user agency to determine more detailed program requirements for the project and shall refine and complete the program in a form acceptable to the owner.

b. The designer shall determine whether the funds available for construction are realistic for the project when compared with the completed program, as described in §107.C.

c. The completed program shall be submitted to the owner and the user agency for their written approval and thereafter only the owner shall have authority to alter the program. Any authorization by the owner to alter the completed program shall be in writing.

d. The designer shall obtain one or more proposals from registered land surveyors and geotechnical engineers when required for the project and recommend to the owner for his approval. The owner will contract directly for such services.

e. The designer shall finalize the time schedule as described in §105.C.1.d, for the owner's approval.

2. Schematic Design Phase

a. Based on the approved completed program, funds available for construction, site location and time schedule, the designer shall prepare schematic design documents in such format and detail as required by the owner, consisting of drawings, outline specifications and other documents illustrating the general scope, scale and relationship of the

project components for the written approval of the owner and the user agency. Specific documentation shall be in accordance with Articles 3.21 through 3.25 of the "Description of Designated Services" for this phase as listed in AIA Document B162 "Scope of Designated Services," 1977 or latest edition, as applicable to this project, except that no study model will be required, but a sketch perspective will normally be required.

b. The designer shall submit to the owner and user agency a statement of probable construction cost based on current area, volume or other unit costs method.

c. An analysis of requirements of the Louisiana Code for State-Owned Buildings as they relate to this project shall be prepared by the designer and submitted for review and approval.

3. Design Development Phase

a. Based on the approved schematic design documents and any adjustments authorized by the owner in the program or the funds available for construction, the designer shall prepare, for approval by the owner, design development documents consisting of drawings, expanded outline specifications based on the 16 divisions of the construction specifications institute (CSI) format, and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be required. Specific documentation shall be in accordance with Articles 4.21 through 4.25 of the "Description of Designated Services" for this phase as listed in AIA Document B162 "Scope of Designated Services," 1977 or latest edition, as applicable to this project, except that no study model will be required, however a sketch perspective will normally be required.

b. The designer shall submit to the owner and user agency a statement of probable construction cost based on the 16 divisions of the construction specification institute format. This shall have back-up material and data in such format and detail as required by owner to support each of the 16 divisions.

c. The designer shall submit a more detailed analysis of the codes required by the Louisiana Code for State-Owned Buildings, consisting of, but not necessarily limited to, statements of:

- i. classification of occupancy;
- ii. classification of construction;
- iii. code allowable area increase for exceptions. Special attention shall be given to Department of Natural Resources' regulations concerning requirements for pipe lines.

d. A preliminary energy conservation analysis for the project shall be prepared by the designer and submitted to the owner for review and approval. The requirements of this analysis shall be as detailed in the "Instructions Designers," referred to herein before.

4. Construction Documents Phase

a. Based on the approved design development documents and any further adjustments in the scope or quality of the project or in the funds available for construction, authorized by the owner, the designer shall prepare for written approval by the owner, the user agency, and other state regulatory agencies as required by law, the following documents bearing the designer's seal and those of his consultants, all sufficiently complete and clear to define the quantity and quality of the work to bid and build the project.

i. Working Drawings. Dimensioned plans, elevations, sections, details and schedules of all architectural, landscaping, civil, structural, mechanical and electrical work in the project in general conformity with Chapter 12, latest Edition, of the AIA Handbook of Professional Practice with the exception of the sections entitled "reproduction" and "ownership."

ii. Technical Specifications. The materials, processes or systems to be incorporated in the work, using the 16 divisions format of the construction specifications institute. State law prohibits the designer from closing specifications on any item in the specification except as provided for in R.S. 38:2290-2296 and in R.S. 38:2290.A. Any reason for closing specifications as provided for by law shall be brought to the attention of the owner in writing for review. Additional requirements for specifications are contained in the "Instructions to Designers" documents which will be furnished to the designer.

iii. Bidding and Construction Contract Forms. The owner will furnish to the designer policy requirements that the designer must include in his documents on the following: advertisement for bids, instructions to bidders, bid form, general conditions, supplementary general conditions, contract between owner and contractor, performance and payment bond, noncollusion affidavit, and other forms used by the owner. If the probable construction cost of the project is \$25,000 or more, the designer shall obtain a prevailing wage determination from the secretary of labor for inclusion in the documents.

b. The designer shall submit to the owner and user agency an updated statement of probable construction cost based on the 16 divisions of the construction specifications institute format with back-up material as described in Paragraph 3 above.

c. The designer shall update and verify the energy conservation analysis prepared in the design development phase.

d. The designer shall submit one bound copy of all design calculations on the project for the owner's files.

5. Bidding and Contract Phase

a. Upon receipt of written approval from the user agency and other state regulatory agencies, receipt of corrected and completed construction documents, and approval of the latest statement of probable construction

cost, the owner may advertise the project for bids and shall be assisted by the designer in obtaining bids. It is the designer's responsibility to have approvals which have not expired or will not be expired by the time of anticipated contract award.

b. The designer shall be responsible for the furnishing and distribution of copies of construction documents to:

i.(a). all contractors licensed in accordance with state law who desire to bid the project, subject to deposit requirements as provided for in the advertisement for bids;

(b). recognized construction trade organizations maintaining plan rooms as directed by the owner;

(c). the user agency, and other state agencies and regulatory authorities as required or directed by the owner;

ii. plan deposits shall not be excessive and shall be subject to the owner's approval (see §109.C.1).

c. The designer shall be responsible for evaluating prior approval requests for substitution of materials, products and equipment required by the applicable statutes and owner procedures.

d. The designer shall prepare and issue all addenda, in accordance with the contract documents, as required to modify or clarify the construction documents. Items not included in the approved program and/or items previously rejected or not approved shall not be included in any addendum without owner's approval.

e. The designer shall arrange and conduct a pre-bid conference in accordance with the contract documents.

f. Unless waived by the owner, the designer shall be present for the opening of bids by the owner and shall provide a form for assisting the owner in tabulating the bids.

g. After receipt of bids, the designer shall analyze the bids, consult with the owner and user agency and make written recommendation to the owner to:

i. award the construction contract to the lowest responsible bidder; or

ii. reject all bids.

6. Construction Phase

a. The designer shall provide administration of the construction contract as set forth herein and in the construction documents.

b. After award of the construction contract, the designer shall complete and submit to the owner a cost data form, in a format provided by the owner.

c. The designer shall make written recommendations for the owner's approval, for the type and number of tests required for the project, as soon as the construction contract has been awarded. The owner will select, contract for and pay for such testing services.

d. The designer, as the representative of the owner during the construction phase, shall advise and consult with the owner and all of the owner's instructions to the contractor shall be issued through the designer. The designer shall have authority to act on behalf of the owner to the extent provided herein or as provided for in the contract documents unless otherwise modified in writing.

e. After the execution of the construction contract the owner will issue a notice to proceed to the contractor and will notify the designer to arrange for and conduct a pre-construction conference. The designer shall furnish to the contractor, sets of the construction documents required to construct the project (see §109.C.1).

f. The designer and his principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents. Such visits by the designer shall not be less than once per week when the work is in progress. On the basis of the designer's on-site observations, he shall endeavor to guard the owner against defects and deficiencies in the work of the contractors. A written report of each visit by the designer to the project shall be mailed to the owner, user agency, and contractor within five calendar days after each visit.

g. The designer agrees that his designated representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the construction documents and such interpretations shall be binding upon the designer as if made by him. All such decisions shall be confirmed in writing immediately with copies to the owner and contractor, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents. This Paragraph does not apply to the designer's full-time project representative.

h. Based on observations at the site and on the contractor's applications for payment, the designer shall determine the amount owing to the contractor and shall issue certificates for payment in such amounts. No certificate of payment shall be issued until a schedule of values has been received from the contractor. The issuance of a certificate for payment shall constitute a representation by the designer to the owner, that the work has progressed to the point indicated and that to the best of the designer's knowledge, information and belief, the quality of the work is in general accordance with the contract documents and that the contractor is entitled to payment in the amount certified. By issuing a certificate of payment, the designer shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the contractor has used the monies paid on account of the contract sum. The designer shall process certificates as promptly as possible with copies to the contractor, and in any case within seven calendar days. If a certificate is held up or adjusted for any reason, written notice stating the reasons for the delay or adjustment must be given to the contractor and owner within seven days.

i. The designer shall instruct the contractor to establish and conduct a regular schedule of monthly meetings, to be held on the job site each month throughout the construction period, and shall require attendance at the meetings by representatives of his principal consultants. The owner and user agency shall be notified of such meetings and may be represented. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way to the end of maintaining progress of the project on schedule and completing the project within the contract time.

j. The designer shall prepare and submit to the owner, user agency and contractor a monthly status report on the project. The form of the report shall be supplied to the designer at the pre-construction conference. The designer's status report shall be submitted to the owner monthly along with the contractor's certificate for payment and designer's statement for professional services.

k. The designer shall be the interpreter of the requirements of the contract documents and the impartial judge of the performance thereunder by both the owner and contractor. The designer shall make decisions on all claims of the owner or contractor relating to the execution and progress of the work and on all other matters or questions related thereto.

l. The designer shall have authority to reject work which does not conform to the contract documents. If the designer considers it necessary or advisable to insure the proper implementation of the intent of the contract documents, he shall request the owner to authorize special inspection or testing of any work in accordance with the provisions of the contract documents whether or not such work be then fabricated, installed or completed.

m. The designer shall promptly review shop drawings, samples and other submissions of the contractor only for conformance with the design concept of the project and for compliance with the information given in the contract documents.

n. Only with the authorization of the owner, shall the designer prepare change orders. The designer shall obtain from the contractor his estimate of cost and time changes in accordance with the contract documents for the change order, review and approve same, and submit it to the owner for approval before any changes are made in the contract. No additional compensation shall be due the designer for preparation of change orders without the written prior approval for such compensation by the owner, except as described in §109.

o. R.S. 38:2241.1 entitled "Acceptance of Governing Authority," defines the procedures to be followed in accepting a project and gives the owner the discretion to make acceptance on either full completion or substantial completion. Upon completion of the work, or on substantial completion or for beneficial occupancy, as requested by the owner, the designer shall conduct an inspection of the project with the owner, the user agency and the contractor to

determine if the contractor's work is in general accordance with contract documents. The designer shall prepare a list of items ("punch-list") for correction or completion together with an assigned dollar value.

i. When the owner desires to accept on either full or substantial completion, the designer shall recommend such acceptance in writing and shall issue a certificate for payment of funds due the contractor, excepting retained percentage, liquidated damages and the value of the "punch-list."

ii. Upon the contractor's furnishing of a clear lien certificate, the designer shall make a final inspection and issue a final certificate for the retainage. A certificate of payment for "punch-list" items shall be issued upon their completion.

iii. Upon recommendation of acceptance, the designer shall receive, review and forward to the user agency guarantees, operation, and maintenance manuals, keys and other closing documents as required by the contract documents. Designer shall obtain a written receipt for these and forward same to the owner, together with copies of all guarantees and warranties.

7. Construction Close-Out Phase

a. After acceptance of the project by the owner, the designer shall prepare and furnish to the owner:

i. a final report in the format and containing information as required by the owner; and

ii. two sets of record drawings (as-built) prepared by the designer, one set on reproducible film sepias and the other a set of prints made from the film sepias, for the owner and user agency files. The record drawings shall be prepared on the basis of information furnished by the contractor and the change orders and shall be reviewed with and approved by the contractor prior to submission.

b. Designer shall inspect and approve completion of "punch-list" items remaining after acceptance and shall certify final payment to the contractor.

c. Compliance with all of the above will constitute completion of the designer's basic services for compensation purposes, however, the designer shall be required to follow up on items to be corrected during the warranty period and shall arrange for and conduct an inspection of the project prior to expiration of the one-year warranty period and shall be required to inform the owner, user agency and contractor of any items to be corrected and shall inspect the project as required until the work is completed, without additional compensation.

B. Project Representation Beyond Basic Services

1. If the owner and designer agree that more extensive representation at the site is required than is described in §113.A.6, then the designer shall provide one or more project representatives to carry out such responsibilities at the site.

2. Such project representatives shall be selected, subject to owner's approval, employed and directed by the designer, and the owner shall compensate the designer for such services in an amount equal to the approved salary of the project representative times a multiplier of 1.6. If, in the opinion of the owner, such representatives are either negligent or unqualified to perform their duties, the designer's representative shall be replaced promptly, without protest.

3. Through the services of such project representatives, the designer shall endeavor to provide further protection for the owner against defects and deficiencies in the work.

4. The owner shall have the option of providing one or more project representatives at the site during construction, which representative(s) shall be paid by the owner and shall be under his direction.

C. Additional Services. Additional services, as required by the owner, shall be provided by the designer only when authorized in writing by the owner, prior to performance of the services, and shall be paid for by the owner as hereinbefore provided. Such services will be incorporated into the contract by an amendment on their completion. Additional services may include, but are not limited to, the following:

1. providing design services relative to future facilities, systems and equipment which are not included to be constructed as part of the project;

2. providing interior design and other services required for the selection of furniture and furnishings, and movable equipment;

3. preparing measured drawings when these are not available, or for archival research;

4. providing extensive program revisions during the program completion phase when the necessity of such as additional services is authorized in writing by the owner;

5. providing any other special services not otherwise included in the contract or not customarily furnished in accordance with generally accepted designer's practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:475 (September 1982), amended LR 11:851 (September 1985).

§115. Designer's Accounting Records

A. Records of direct reimbursable expenses and expenses pertaining to additional services on the project, and for services performed on the basis of multiplier times direct personnel expense, shall be kept on the basis of generally accepted accounting principles and shall be furnished and/or made available to the owner or his authorized representative on request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:477 (September 1982), amended LR 11:854 (September 1985).

§117. Termination of Contract

A. The contract between owner and designer may be terminated by either party upon seven days written notice to the other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party, or the contract may be terminated by mutual consent.

B. In the event of termination by the owner due to failure of the designer to perform satisfactorily, the designer shall receive no compensation beyond that already paid or due for the last satisfactorily completed phase. Any work done shall become the property of the owner to be used at his discretion without additional compensation to the designer. No compensation shall be paid to the designer for any uncompleted phase, except by written agreement between owner and designer prior to termination. Such termination shall constitute the designer being held at fault under the terms of R.S. 38:2313.4 which provides that problems with time delays, cost overruns or design inadequacies for which the designer is held to be at fault shall be taken into account by the selection boards in considering past performance on public projects.

C. In the event the contract is terminated by mutual consent, the designer shall be paid for all work completed prior to termination, and all work done shall become the property of the owner to be used at his discretion without additional compensation to the designer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985).

§119. Abandonment or Suspension

A. If any work designed or specified by the designer is abandoned or suspended in whole or part by the owner, the designer is to be paid for the services rendered up to receipt of written notice from the owner, as follows.

1. If the abandonment or suspension occurs at the completion of a phase, the designer shall be paid the full amount due on completion of such phase as described in §111.A.1.

2. If the abandonment or suspension occurs during a phase, the designer shall submit to the owner all documents prepared by him up to receipt of written notice from the owner, and the owner shall compensate the designer up to the percentage completion of that phase.

B. Should the project be reactivated, the new fee will be computed on the basis of the revised funds available for construction. The designer's fee for the phases of work required to complete the project shall be the percentages for such phases stated in §111.A.1 applied to the new fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985).

§121. Ownership of Documents

A. Drawings and specifications are, and shall remain, the property of the owner whether the project for which they are made is executed or not. Such documents may be used by the owner to construct one or more like projects without the approval of, or additional compensation to, the designer. The designer shall not be liable for injury or damage resulting from re-use of drawings and specifications if the designer is not involved in the re-use project. Prior to re-use of construction documents for a project in which the designer is not also involved, the owner will remove and obliterate from such documents all identification of the original designer, including name, address and professional seal or stamp.

B. Upon completion of the project, tracings shall remain in the files of the designer, with record drawings (as-built) being furnished to the owner and the user agency, as called for in §113.A.7. The designer shall have the right to re-use the construction documents on other projects not constructed for the owner.

C. The right of ownership provided for above shall not be transferable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:854 (September 1985).

§123. Successors and Assigns

A. The owner and the designer each binds himself, his partners, successors, assigns and legal representatives to the other party to the contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of the contract. Neither the owner nor the designer shall assign, sublet or transfer his interest in the contract without the written consent of the other.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985).

§125. Extent of Agreement

A. The contract, this manual, and the "Instructions to Designers" represent the agreement between the owner and the designer. The contract may be amended only by written instrument signed by the owner and the designer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:855 (September 1985).

§127. Governing Law

A. The contract shall be governed by the laws of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985).

§129. Other Conditions

A. Insurance. Liability insurance shall be required as per the owner's requirements on a project by project basis.

B. Affidavit. The designer, on signing the contract, shall submit to the owner, on such form as the owner shall designate, a noncollusion affidavit.

C. When the time schedule has been established by the owner and designer as described in §105.C.1, a completion date shall be set up for delivery of 100 percent completed, coordinated and ready to bid construction documents to the owner. If the designer is delayed through no fault of his own, then the completion date shall be extended accordingly, provided the designer makes such request in writing before starting the subsequent phase and the owner approves such as justified.

D. Arbitration. All claims, disputes and other matters arising from the contract shall, at the option of the owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the construction industry association rules of the American Arbitration Association. Any such arbitration proceeding shall, at the option of the owner, be consolidated with or joined to other arbitration proceedings between the owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

E. Fault. Time delays, cost overruns, design inadequacies or other problems with performance of the designer may result in the designer being held "at fault." The owner shall determine if the designer is to be held at fault. Such determination shall constitute documentation of the designer being held at fault as provided in R.S. 38:2313.B.(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 13:656 (November 1987).

Subchapter B. Historic Restoration

§151. Historic Restoration Projects

A. This rule applies to the repair, renovation or reconstruction of any state-owned building that is listed on the National Register of Historic Places or any state-owned building which is eligible to be included on this register. When required, eligibility shall be determined by the State

Office of Historic Preservation. For these projects, Facility Planning and Control may require the designer of the project to assess the structure and proposed scope of work and recommend if it will be in the best interest of the state to prequalify the bidders for the project. The items for consideration in this determination shall include but not be limited to the following:

1. historic significance of the structure;
2. extent of the work to be performed;
3. condition of the structure before renovation;
4. previous renovations;
5. program objectives of the owner and user;
6. effect of law, codes, regulations and ordinances;
7. environmental impact;
8. long and short-term economic impact.

B. Based on the results of this determination, the designer shall recommend to Facility Planning and Control whether or not the bidders for the specific project should be prequalified and justify his recommendation when required by Facility Planning and Control.

C. If Facility Planning and Control determines that it is in the best interests of the state to prequalify the bidders it shall instruct the designer of the project to prepare a contractor's qualification statement and make it available to prospective bidders. The designer shall also be instructed to administer the prequalification process including receipt and evaluation of complete qualification forms and recommendations to Facility Planning and Control regarding which contractors are qualified to submit bids for the work. The contractor's qualification statement shall be prepared using AIA Document A305. The requirements of this document shall be supplemented by requirements that will require the bidders to demonstrate actual, verifiable experience with projects of similar type and scope and may require the demonstration of actual, verifiable experience in specific required trades.

D. The advertisement for bids for any project requiring prequalification shall state this requirement and the last date for the submittal of contractor's qualification statements. Any statements received after this date will not be considered.

E. With the approval of Facility Planning and Control the designer shall notify every applicant whether or not he or she has been determined to be qualified and allowed to bid. This notification shall be provided within a time specified in the advertisement for bids.

F. The designer shall be responsible for answering reasonable requests for justification of his or her determinations within a reasonable time and shall provide such a response at least five working days prior to the bid date provided the request for justification is received no later than three working days after the time the prospective bidder has been notified that he or she is not qualified. Unless these time requirements are met the designer shall not be

responsible for providing justifications or changes of determination in time to allow prospective bidders to bid. The designer's decisions in these matters shall be final.

G. After the prequalification process is complete only prequalified bidders may submit bids on those designated projects and the contracts on those designated projects shall be awarded to the prequalified bidder submitting the lowest responsible bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and R.S. 38:2212.4.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 19:488 (April 1993).

Chapter 2. Capital Outlay Budget Request Forms

§201. Instructions for Preparation of Capital Outlay Budget Request Forms

A. When preparing a five-year capital outlay plan, a first year request should reflect only those projects which must be funded next year. If a project can wait, it should be shown in years 2-5 of the request.

B. For projects other than those funded from self-generated cash, federal funds or dedicated revenues, the only anticipated source of funding available is the sale of general obligation bonds. It is, therefore, necessary to limit capital outlay projects which do not have a cash source of funding to those which have an anticipated useful life of 20 years or more and a value or cost of at least \$50,000. Examples of projects that qualify for inclusion in the capital outlay bill are:

1. land acquisition;
 2. site development and improvement;
 3. acquisition or construction of buildings or other structures;
 4. additions of expansions to existing facilities;
 5. major repair or renovation of existing facilities;
 6. installation, extension or replacement of utility systems or major building system components;
 7. roof replacement;
 8. asbestos abatement;
 9. fixed equipment which is connected to building utility systems;
 10. initial equipment and furnishings for new buildings.
- However, depending on the useful life of equipment and furnishings, a decision may be made to fund these items through alternate sources.

C. Capital outlay requests should not include any of the following:

1. minor repair or renovation projects, such as painting, flooring, etc.;

2. minor roof repairs which do not extend the useful life of the roof;
3. movable equipment and furnishings, except that associated with new buildings;
4. vehicles of any type;
5. materials and supplies;
6. repair or renovation of minor building components, such as plumbing fixtures, locks, etc.;
7. routine maintenance of existing equipment.

D. All requests are due to Facility Planning and Control by November 1, and must be submitted through and prioritized by the appropriate governing authority. Each department should attach a summary sheet listing all requested projects in priority order by department. Project funding previously requested and appropriated in a prior year capital outlay act, but for which bonds were not sold in that prior year, must be requested again if the project funding is not reauthorized in the current outlay act.

E. Submit six hard copies of the budget request document and the completed diskette(s) (soft copy) along with a transmittal to: Division of Administration, Facility Planning and Control, State Capitol Annex, Room B-31, Post Office Box 94095, Baton Rouge, Louisiana 70804-9095. In addition, one duplicate hard copy set must be submitted at the same time to both the: Joint Legislative Capital Outlay Committee, 21st Floor, State Capitol, Post Office Box 94062, Baton Rouge, Louisiana 70804-9062; and Legislative Fiscal Office, 18th Floor, State Capitol, Post Office Box 94097, Baton Rouge, Louisiana 70804-9097.

1. For years 2-5 requests, the agency will need to complete only the "Recap Sheet" and the section entitled "Demonstration of Need" (Screens 1-8 in the CORTS program).

2. If assistance is needed in completing the forms or using the CORTS software, contact Facility Planning and Control at (225) 342-0820 or LINC 421-0820.

F. Terms Used in Capital Outlay Requests

1. Schedule Number Department plus FACS agency number. For nonstate entities, search for a schedule number that applies. If one cannot be found, use schedule number 00-0000.

2. Class A Project Emergency. A capitol project can be classified as emergency if it is essential to alleviate conditions hazardous to life or property. Examples include extensive roof leaks, structural defects, accreditation or code violations, asbestos/hazardous material abatement, and extensive breakdown of HVAC systems.

3. Class B Project. Current Program Requirements. Needs that would allow an agency to bring its facilities up to program standards set by national or regional accrediting associations. Also, changes necessary to improve the functioning of a program belong in this classification.

This would include measures to rectify inadequacies or the non-existence of facilities stipulated by accrediting associations required for program achievement. It would also include provisions for major alterations to meet or maintain current program requirements. Examples include addition of a new program, changes or relocation of an existing program.

4. Class C Project. Anticipated Program Needs. Projects anticipated on the basis of increased enrollments, additional service, obsolescence of existing facilities, and changing an agency's role, scope or mission. Examples include addition of a new program, changes or relocation of an existing program.

5. Project Title. Give the project a concise, descriptive title. This title should be used on all correspondence, etc.

6. Project Priority Number. Assign a priority number to each new project request in keeping with the relative importance to the achievement of overall department goals. The priority number given a project must reflect the overall department priorities, not the priorities of a single institution.

7. State Funds. Include cash from the State General Fund.

8. General Obligation Bonds. Bonds or other evidences of indebtedness whose debt service is payable from the Bond Security and Redemption Fund.

9. Reimbursement Bonds. Special bonds whose debt service is payable by revenues derived from operation of the bond funded facility, e.g., a parking facility, toll bridge, laundry, etc.

10. Self-Generated Funds. Represents self-generated revenue from agency operations, e.g., license fees, admission fees, etc., or from statutory dedications.

11. Federal Funds. Any federal grant, loan, etc., that has been applied for, awarded, or received for the project.

12. Local and Other Funds. Any other type of financing not covered above, including interagency transfers, donations, etc. For nonstate entities, indicate any local matching of funds here; this should include any local bond issue proceeds, millages, or other forms of local participation.

13. Land Acquisition. Cost of purchasing real property, including closing costs.

14. Planning Cost. Fee for professional services for planning. This figure should be 10 percent of construction cost.

15. Construction Cost. Cost of construction, renovation, repair, demolition or other work, excluding land acquisition, professional fees, and other costs. This should include the cost of all fixed equipment, such as bathroom fixtures, laboratory and kitchen equipment, etc.

16. Miscellaneous. Incidental expenses not listed above, including insurance, legal and testing. This figure should be 10 percent of the construction cost.

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

17. Movable Equipment. Furnishings and equipment which are not fixed to the building or facility. If funds for movable equipment are being requested for the current year, a detailed, itemized listing must be provided. It should include a brief description of the equipment, the quantity of identical pieces, the estimated unit cost of each item, the estimated cost (sum of quantity times estimated unit cost), and the source from which the estimate was obtained.

18. Net Area/Person. Net area per person required to satisfy the function of the space type.

19. Net Area Required. Net area required for each functional space type (number of people times the net area per person required).

20. Burden Factor. Apply a percentage to the net area which reflects architectural burden for the facility; namely, circulation areas (corridors, elevators, stairs), janitorial and equipment rooms, public restrooms, interior and exterior walls and partitions, etc.

21. Total Gross Area. This is the product of the total net area times the burden factor percentage.

Title 34, Part III

NEW PROJECT REQUEST
CAPITAL OUTLAY REQUEST FOR FY 1996-97
PAGE – 1

PROJECT

Title Description
Programs Served Site Location

DEMONSTRATION OF NEED

Purpose or Objectives of Proposed Project (Check as many as apply)	
<input type="checkbox"/> Expand Existing Program	<input type="checkbox"/> Changes in Population Served
<input type="checkbox"/> Relocate Existing Program	<input type="checkbox"/> To Address Code Violations, Court Orders, Accreditation
<input type="checkbox"/> Add New Program	<input type="checkbox"/> To Address Actual or Threatened Prop. Damage
<input type="checkbox"/> Changes in Existing Program	<input type="checkbox"/> Changes in Accepted Standards/Guidelines
<input type="checkbox"/> Changes in Mission, Goals, Objectives	<input type="checkbox"/> Other
Describe	
Program Service Description	
Number of Employees	Present _____ Future _____
	Citizens Served _____ Daily Users _____
Describe strategic long range plan for program (5 Yr?)	
APPLICABLE GUIDELINES/STANDARDS	
List publications, regulatory agencies guidelines for the program.	
Minimum or mandatory requirements of above listed for program.	
What alternatives were considered?	
<input type="checkbox"/> Maintaining Status Quo	<input type="checkbox"/> Lease Space
<input type="checkbox"/> Use Existing Space	<input type="checkbox"/> Renovation of Existing Space
<input type="checkbox"/> New Space	<input type="checkbox"/> Expansions of Similar Program Elsewhere
How use best option determined (Studies, Etc.)?	
Were any feasibility studies or needs assessment reports prepared? <input type="checkbox"/>	
If so, please name contact person. _____ Phone _____	
List socioeconomic and environmental affects of project.	
Identify and describe other similar facilities in your area and evaluate their capabilities to meet needs.	

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

PROJECT RECAP SHEET
CAPITAL OUTLAY REQUEST FOR FY 1996-97
PAGE - R-1

PROJECT		REQUEST NUMBER
Title _____		
Department Priority Number ____ of ____		Location _____
A. Emergency Project { }		Parish _____
B. Current Project Requirements { }		Senate District _____
C. Anticipated Program Needs { }		House District _____

APPLICANT	
Schedule No. _____	Site Code _____
Department / Umbrella User _____	State ID _____
Agency / Management Board _____	Dept. Contact _____ Phone _____
Local User Facility _____	Local Contact _____ Phone _____

FINANCIAL

Total Project Cost Estimate	Local User Estimate:	Agency Estimate	Department Estimate	F. P. & C Estimate
Land / Building Acquisition	_____	_____	_____	_____
Planning Costs (10%)	_____	_____	_____	_____
Construction Costs	_____	_____	_____	_____
Hazardous Materials Abatement	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____
Misc./Contingency Costs (10%)	_____	_____	_____	_____
Equipment Costs	_____	_____	_____	_____
Total	0	0	0	0
Time Needed: Planning				
Construction				

If planning has begun, when will it be complete?

PRIOR FUNDING:

Authorized Source	Amount	Year	Act Number	Priority Level	Were Bonds Sold or Lines of Credit Granted?
	_____			_____	Bonds () Credit ()
Total (A)	0				

Proposed New Funding:	First Year	Years 2-5	Source of Funding
State Funds	_____	_____	Cash () Rev.Bonds ()
Gen.Obl. Bonds	_____	_____	
Reimb. Bonds	_____	_____	
Self-Gen. Funds	_____	_____	
Federal Funds	_____	_____	
Other	_____	_____	
Total	(B) 0	(C) 0	

Total Project Funding (A=B+C) _____ (Should Equal Total Project Cost Estimate)

Annual Operation & Maintenance Cost Increase (Decrease) _____ 0

AGENCY IMPACT STATEMENT

I hereby certify that this project/program has been reviewed, approved and integrated into our department's long range strategic plan and five year budget. The impact of this project/program's operating budget on our budget has been approved by	
Name: _____	
Title: _____	Date: ____/____/____

DOA REVIEW

Review Architect/Engineer :	Review Date: ____/____/____
FPC Director :	Review Date: ____/____/____
Review Budget Analyst :	Review Date: ____/____/____
OPB Director :	Review Date: ____/____/____

DOA COMMENTS

--

**NEW PROJECT REQUEST
CAPITAL OUTLAY REQUEST FOR FY 1996-97
PAGE - 2**

ARCHITECTURAL PROGRAM

Preparer _____

Date Prepared ____/____/____

Type of Space	#	Occupants	Net Area / Person	Net Area Required
			Net Area Required	0

Net Area _____ X Burden Factor _____ = Total Gross Area Required _____

Totals

_____ Employees

_____ Visitors / Clients

_____ Contract Employees

_____ Temporary Employees

_____ Student / Assistant

_____ Other

Additional program requirements (Parking, Utilities Tie-In, Location, Shipping & Receiving, Public Access, Site Amenities, etc.) Describe below.

What is the length of time needed for planning ?

Construction ?

NEW CONSTRUCTION

What will happen to existing facility? (Demolition, Renovation, Expansion of other programs)

How funded?

Has site been surveyed for underground storage tanks? ()

When ?

RENOVATION /ADDITION

Describe history and condition of building, extent and date of previous major renovations.

Describe the extent of the proposed renovation /addition.

Where will the occupants be housed during construction ?

How funded ?

What portion of the const. Budget addresses modifications required to meet The Americans with Disabilities Act Guidelines (ADAG) ?

What hazardous materials are addressed in the construction budget?

() Underground Storage Tanks () PCB's () Asbestos

() Lead Paint () Other

Has the facility's asbestos management plan been consulted for abatement requirements? ()

Contact person

What is the current age, condition and type of the existing roof and estimated date of replacement?

Describe roof penetrations, equipment, etc.

For roofing projects, what is current condition of rooftop equipment & estimated date of replacement?

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

**NEW PROJECT REQUEST
CAPITAL OUTLAY REQUEST FOR FY 1996-97
PAGE - 3**

CONSTRUCTION COSTS

Source of Data _____

Date Prepared ____/____/____

List special cost affecting factors considered (Unfinished Warehouse Space, Extraordinary HVAC, etc.)

COST OF CONSTRUCTION CALCULATION; (Provided Roof S.F. if Roofing Project)

Type of Space	Total Gross Area	Cost /S.F.	Total Cost
Subtotal/Average	0	0.00	0

ADDITIONAL LINE ITEM EXPENSES (Parking, Utility Tie-In, Security System, etc.)

Item	Unit Cost	Total Cost
Subtotal		0
Total Construction Cost		0

EQUIPMENT COSTS

Source of Data _____	Date Prepared ____/____/____
SUMMARY OF EQUIPMENT AND ESTIMATED COSTS:	
0	
0	
0	
0	
0	
0	
Total 0	
If this project is a current year request, attach an itemized breakdown with unit costs, estimated useful life of the equipment.	
If this project is for renovation or relocation for an existing program, will existing equipment continue to be used ? ()	
If not, why?	

PROPOSED PROJECT FUNDING

	96-97	97-98	98-99	99-00	00-01	Total
G. O. Bonds	_____	_____	_____	_____	_____	_____
State Funds	_____	_____	_____	_____	_____	_____
Reimb. Bonds	_____	_____	_____	_____	_____	_____
Self-Gen Revenue	_____	_____	_____	_____	_____	_____
Federal Funds	_____	_____	_____	_____	_____	_____
Local & Other Funds	_____	_____	_____	_____	_____	_____
Total	0	0	0	0	0	0

**NEW PROJECT REQUEST
CAPITAL OUTLAY REQUEST FOR FY 1996-97
Page - 4**

PROGRAM OPERATING 7 MAINTENANCE COSTS**BUDGET REQUEST SUMMARY**

(Should match submittals BR-1 and BR-2 to
Office of Planning & Budget)

	Current Year Budgeted	Annual Projected Increase (Decrease) After Project Completion
Expenditures:		
Salaries		
Other Compensation		
Related Benefits		
Travel		
Operating Services		
Supplies		
Professional Services		
Other Charges		
Debt Services		
Interagency Funds		
Acquisitions		
Major Repairs		
Unallotted		
Total Expenditures	0	0
Means of Financing:		
State General Fund (Direct)		
State Gen. Fund By::		
Interagency Transfers		
Fees & Self-Gen. Revenues		
Statutory Dedications		
Interim Emergency Board		
Federal Funds		
Total Means of Financing	0	0
Excess or (Deficiency) of	0	0
Expenditures over Financing	(Should Equal 0)	(Should Equal 0)

	96-97	97-98	98-99	99-00	00-01
Total Expenditures	0	0	0	0	0
Means of Financing:					
State Gen. Fund (Direct)					
State Gen. Fund By:					
Interagency Transfers					
Fees & Self-Gen. Revenues					
Statutory Dedications					
Interim Emergency Board					
Federal Funds					
Total Means of Financing	0	0	0	0	0

MAILING ADDRESSES

Applicant (Local User) Mailing Address

Facility Physical Address

AUTHORITY NOTE: Promulgated in accordance with R.S.
39:102.C.

HISTORICAL NOTE: Promulgated by the Office of the
Governor, Division of Administration, Facility Planning and
Control Section, LR 7:6 (January 1981), amended LR 20:185
(February 1994).

Chapter 3. Louisiana Building Code for State-Owned Buildings

§300. Preface

A. In accordance with R.S. 40:1721-1724, all building projects undertaken by the state of Louisiana shall be designed to conform to the specific code requirements of the Louisiana building code for state-owned buildings. This code is described as follows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982).

Subchapter A. Part IV of Chapter 8 of Title 40 of Louisiana Revised Statutes

§301. Declaration of Policy (R.S. 40:1721)

A. In order to insure the public health and safety and to facilitate the efficient use of state funds in the new construction, alterations, additions or renovations of state buildings, there is hereby created a Louisiana Building Code for state-owned buildings consisting of the various building codes and standards designated in this Part.

B. The provisions of this Part should not be construed to supersede any local building codes or standards except as they apply to state-owned buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:855 (September 1985).

§303. Louisiana Building Code (R.S. 40:1722)

A. The new construction, alteration, addition or renovation of all state-owned buildings for which bids are let after the effective date of this Part must comply with the rules and regulations to be promulgated by Facility Planning and Control of the Division of Administration in conformity with the Administrative Procedure Act, which rules and regulations shall establish as minimum standards the provisions of the Louisiana Building Code provided in Subsection B hereof.

B. The Louisiana Building Code shall consist of the following designated and described codes and standards:

1. the Life Safety Code, Standard 101, 1973 edition as published by the National Fire Protection Association;

2. Chapter XIV of the State Sanitary Code (Plumbing), as promulgated by the secretary of the Department of Health and Human Resources;

3. The Standard Building Code-1973 Edition with 1975 revisions as published by the Southern Building Code Congress;

4. the Standard Mechanical Code-1971 edition as published by the Southern Building Code Congress;

5. the National Electric Code-1975 edition (NFPA Number 70-1975) as published by the National Fire Protection Association.

C. All of the above designated and described codes and standards shall include all later editions and revisions as now or hereinafter provided.

D. In all cases of conflict between the state sanitary code and the standard mechanical code, the provisions of the state sanitary code shall be used. In all cases of conflict between the life safety code and any of the above codes, the provisions of the life safety code shall be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:855 (September 1985).

§305. Administration; Exceptions (R.S. 40:1723)

A. The Louisiana Building Code shall be administered by Facility Planning and Control of the Division of Administration.

B. However, nothing contained herein shall affect the state fire marshal and his jurisdiction on matters of life safety and related areas as provided by Part III of Chapter 7 of Title 40 of the Louisiana Revised Statutes, and the secretary of the Department of Health and Human Resources shall administer the provisions of Chapter XIV of the State Sanitary Code relative to plumbing.

AUTHORITY NOTE: Promulgated in accordance with RS 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:856 (September 1985).

§307. Building Permits and Occupancy Permits (R.S. 40:1724)

A. The building permit will be issued to the building contractor by the parish or the municipality when the plans and specifications have been approved by the state fire marshal, the secretary of the Department of Health and Human Resources, Facility Planning and Control and the permit fee has been paid in full by the contractor to the parish or municipality.

B. The occupancy permit will be issued to the using agency when the building construction has been approved by the state fire marshal, the secretary of the Department of Health and Human Resources and Facility Planning and Control.

1. If any provision or item of this act or the application thereof is held invalid, such invalidity shall not affect other provisions, item or applications of this act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this act are hereby declared severable.

2. All laws or parts of laws in conflict herewith are hereby repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:479 (September 1982), amended LR 11:856 (September 1985).

Chapter 5. Rental and Lease Procedure

§501. Authority, Policy, Purpose, and Application

A. Authority. Louisiana Revised Statutes provide that all agreements for the lease or rental of space shall be made by the agency whose offices and/or activities are to be housed, but shall be made and entered into only with the approval of the commissioner of administration. (Louisiana Procurement Code, Louisiana Revised Statutes, Chapter 17 of Title 39 R.S. 39:1551 et seq. with particular reference to R.S. 39:1641-1644). The commissioner has designated the Office of Facility Planning and Control, Real Estate Leasing Section, to administer this function (R.S. 39:1641).

B. Policy. It is the policy of the Division of Administration to acquire the best available rental space for state agencies with the greatest amount of competition among lessors of privately owned facilities (R.S. 39:1594.G, R.S. 39:1594.E as amended, R.S. 39:1643.A as amended).

C. Purpose. The purpose of these procedures and regulations is to simplify and clarify the procurement practices for renting and leasing of space for state agencies, to provide increased economy and efficiency in procurement activities, to foster more effective competition for bid space, ensure fair and equitable treatment of all persons involved, to enable greater public confidence in the lease procurement process, and to maintain a procurement system of quality and integrity.

D. Application. The definition of *agency* stated in R.S. 39:2.A(2) shall be the sole definition of the term *state agency* employed herein in connection with the acquisition of housing space and the fact that an agency is supported by fees or taxes collected by, or dedicated to, the agency or which otherwise receives its operating funds through means other than direct appropriations, shall not be a test as to whether these rules shall be applicable to an agency of the state. (R.S. 39:1641.C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:902 (November 1984), amended LR 26:1019 (May 2000).

503. Space Acquisition Method

A. In General

1. The Office of Facility Planning and Control, Real Estate Leasing Section, will retain an original of each lease and will notify a user agency when its lease is about to expire.

2. All standard forms mentioned herein are available on request from the Office of Facility Planning and Control, Real Estate Leasing Section.

3. Every lease for the use of 5,000 square feet or more, with the exception of emergency and sole source procurements as set forth in §§513 and 514 and cooperative use agreements between public procurement units, as set forth in R.S. 39:1701 and 1704, must be procured in accordance with R.S. 39:1594.

4. All leases and lease amendments, including amendments both for space of less than 5,000 square feet (which can be negotiated) and for 5,000 square feet or more, which must be bid, must be preceded by a request for approval form RL-2A (negotiable and amended leases) and RL-2B (leases competitively bid) on which the request for space, location and terms of lease are detailed.

5. The Office of Facility Planning and Control, Real Estate Leasing Section, will examine the request in relation to authorized programs, funds, and personnel, and will approve, take under advisement, or disapprove the user agency request, taking into consideration, including but not limited to, the price per square foot of rental space, space allocation, availability of housing in state-owned space, location of the requested space, number of locations considered, timeliness of the availability of the requested space.

B. Procedure for Space Less Than 5,000 Square Feet

1. An agency seeking to acquire a lease for less than 5,000 square feet or to amend an existing lease which will result in total leased space of less than 5,000 square feet, shall attempt to obtain at least three written proposals. Upon receipt of these proposals, the user agency shall enter into a negotiation process to obtain the best price and terms possible under the circumstances subject to approval by the Division of Administration.

2. Once the agency has completed this negotiation process and has selected a prospective lessor, it submits an RL-2A form to the Office of Facility Planning and Control, Real Estate Leasing Section, for approval of the proposed lease.

3. If an RL-2A request is not approved, the agency is notified in writing of the reasons for disapproval. Facility Planning and Control, Real Estate Leasing Section, may request additional information for further consideration.

4. Upon approval of the RL-2A request, the Real Estate Leasing Section will prepare the lease and extract of lease/amendment. The lease, extract of lease/amendment, and accompanying affidavit are executed, first by the lessor, then by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The extract of lease and the affidavit become a part of the lease. All leases and amendments shall be executed as four originals and distributed as follows: two leases shall be distributed to the user agency, one distributed to the lessor, and one retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record

the extract of lease/amendment, lease or amendment in the public records of the parish in which the leased premises are located, and provide the Real Estate Leasing Section with a certified copy showing such recordation.

C. Space 5,000 Square Feet or Greater

1. The Bid Specifications and Solicitation

a. The Office of Facility Planning and Control, Real Estate Leasing Section, receives the RL-2B from the user agency. If an RL-2B is not approved, the agency is notified in writing of the reasons for disapproval. Additional information may be requested for further consideration. If the RL-2B is approved, the Office of Facility Planning and Control, Real Estate Leasing Section, prepares the bid specifications. The bid specifications shall include the bid proposal form, affidavit attesting to control of the offered property and parking area, evidence of agency, corporate, or partnership authority (if applicable), space specifications and requirements, criteria for evaluation of the bids and a sample lease. Criteria for evaluation of bids shall include location of the proposed space, conditions of the proposed space, suitability of the proposed space for the user agency's needs, and timeliness of availability of the proposed space. (Act 635 of 1995 amending R.S. 39:1594.E and Act 121 of 1997 adding R.S. 39:1594.C(4).

b. The Real Estate Leasing Section forwards the bid specifications to the user agency for final review and comment prior to advertisement.

2. Advertisement and Notice. As required by R.S. 39:1643, leases for the use of 5,000 square feet or more of space are to be awarded pursuant to R.S. 39:1594 (unless exempt under R.S. 39:1593) which requires adequate public notice of the invitation for bids to be given at least 20 days prior to bid opening date. This notice is given by advertising in the official journal of the state and in the official parish journal of the parish where the property is to be leased. The advertisement shall be published twice in the state and parish journals, with one publication on a Saturday, if available. The bid specifications are then made available and distributed to bidders who request a copy. Bidders receiving a copy of the bid specifications, become a "Bidder of Record" for that solicitation.

3. Pre-Bid Conference. A pre-bid conference may be held upon the request of the user agency to answer questions from prospective bidders. The date and time of the pre-bid conference shall be included in the advertisement, which shall state if attendance at the pre-bid conference is a pre-requisite to submission of a bid.

4. Addenda to Bid Specifications

a. A potential bidder or the user agency can request changes/alterations to the advertised bid specifications, but only in writing to the Office of Facility Planning and Control, Real Estate Lease Section. The written request is reviewed by the Real Estate Leasing Section and by the user agency. If approved, an addendum to the bid specifications is issued and provided to all "Bidders of Record."

b. Addenda modifying the bid specifications must be issued no later than three working days prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying the bid specifications within the three-day period prior to the advertised time for the opening of bids, the opening of bids shall be extended exactly 14 days, without the requirement of re-advertising. Addenda shall be sent to all "Bidders of Record."

c. If any changes/alterations to the advertised bid specifications are a substantial deviation from the advertised bid specifications, the solicitation must be re-advertised with a new bid opening date established. The bid opening is rescheduled for at least 20 days after the re-advertisement. Any alterations or changes to advertised geographic boundaries may be grounds for re-advertisement of the solicitation.

5. Bid Opening

a. Bids are opened by the Real Estate Leasing Section at the specified date, time and place. The Real Estate Leasing Section evaluates the bids and arranges them on a bid tabulation sheet. If deemed necessary by the Real Estate Leasing Section, additional information and documentation evidencing control of the offered property and parking areas can be requested of the apparent low bidder.

b. The Real Estate Leasing Section sends the bid tabulation to the user agency with a request that the user agency verify availability of funds for rental payments to the apparent low bidder and compliance of the property offered by the apparent low bidder with the specified geographic boundaries.

6. Determination of Lowest Bidder

a. Upon receipt from the user agency of verification of availability of rental payments to the apparent low bidder and verification of compliance of the property offered by the apparent low bidder within the specified geographic boundaries, the Real Estate Leasing Section sends written notice to the apparent low bidder requesting schematic floor plans, site plans, and outline specifications of the proposed lease space. The apparent low bidder is allowed 20 days in which to provide the required documents. The user agency shall then review the documents as to adjacencies and layout of the space. If they meet the agency's requirements, the agency shall then submit the schematic plans, site plans, and outline specifications to the Real Estate Leasing Section for review. Once the Real Estate Leasing Section determines they are in compliance with the advertised bid specifications, it will proceed with the issuance of the lease documents.

b. If the schematic plans, site plans, and outline specifications are not approved by the Real Estate Leasing Section, the apparent low bidder is allowed 10 days in which to correct any deficiencies or discrepancies between the submitted plans and the advertised bid specifications. Upon receipt of the revised plans, the Real Estate Leasing Section reviews for compliance with the advertised bid specifications. If the documents are then approved by the

Real Estate Leasing Section, the lease documents are then issued. Should the schematic plans, site plans, and outline specifications still not comply with the advertised bid specifications, the bid may be rejected for non-compliance with the advertised bid specifications. The next apparent low bidder can then be considered by following the same procedures.

c. Should all bidders be considered non-responsive or not in compliance with the advertised bid specifications, the bid solicitation is canceled. The bid specifications can be reviewed for possible revisions in order that a new solicitation can be issued.

7. Execution of the Lease. The Real Estate Leasing Section will prepare the lease and extract of lease. The lease and extract of lease and accompanying affidavit are executed, first by the lessor, who must return the signed lease and the affidavit within 10 days after receipt. The lease is then executed by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The affidavit and extract of lease become a part of the lease. All leases shall be executed as four originals and are distributed as follows: two leases to the user agency, two to the lessor, and one retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record an extract of lease or lease in the public records of the parish in which the leased premises are located and provide the Real Estate Leasing Section with a certified copy showing such recordation.

8. Notice to Other Bidders. When the lease documents are mailed to the lowest, responsible bidder for execution, all other bidders are notified via certified mail of the contract award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:902 (November 1984), amended LR 26:1020 (May 2000).

§505. Space Offered

A. A bidder may offer space consisting of any of the following: owned or leased space ready for occupancy, owned or leased space to be renovated for occupancy, owned or leased new construction.

B. Space may not be offered for lease in response to a solicitation if the same space has been offered/bid for another solicitation within the last 60 days and has not been withdrawn for that solicitation.

C. A bidder must control the offered property and parking areas as of the date of the bid opening and throughout the term of the lease and option period. He shall submit an affidavit with his bid indicating how the property and parking areas are controlled. The Real Estate Leasing section shall ask the apparent low bidder to provide schematic plans, outline specifications, and site plans and will evaluate those plans and specifications to determine compliance of the offered space with the advertised bid specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:902 (November 1984), amended LR 26:1021 (May 2000).

§506. Rejection of Bids and Cancellation of Invitations for Bids or Requests for Proposals

A. The Chief Procurement Officer or designee has the right to reject any or all bids, and to cancel an invitation for bids, a Request for Approval Form RL-2, or other solicitation when it has been deemed to be in the best interest of the state of Louisiana. Such determination must be made in writing.

B. If the solicitation is cancelled prior to bid opening, all bidders of record (those bidders who obtain from the Real Estate Leasing Section a copy of the bid specifications) are notified. If the solicitation is cancelled after the bid opening, all bidders are notified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1022 (May 2000).

§508. Correction and Withdrawal of Bids

A. Prior to Bid Opening. Prior to the bid opening, a written request for the withdrawal of a bid will be granted if the request is received prior to the specified time of the bid opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state.

B. After Bid Opening. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders. Such bid may be corrected or withdrawn after bid opening only with the approval of the Office of Facility Planning and Control, Real Estate Leasing Section. A bidder who wishes to correct or withdraw a bid, must request approval for such action in writing. The request must specify the justification for the proposed correction or withdrawal. If a bidder is allowed to withdraw a bid, he may be required to withdraw all other bids he has submitted for that solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1022 (May 2000).

§509. Determination of Responsibility

A. The Real Estate Leasing Section may request that an apparent low bidder submit suitable evidence that he is a responsible bidder. A responsible bidder shall:

1. have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;

2. have the necessary experience, organization, technical qualifications, skills, and facilities, or have the ability to obtain them (this may include subcontractor arrangements);

3. be able to comply with the proposed or required occupancy date; and

4. not have an unsatisfactory record of contract performance.

B. The Real Estate Leasing Section may request the following information:

1. a letter of credit from a financial institution;

2. financial statement;

3. a letter of commitment from the bank or other institution financing the project and addressed to the Division of Administration, stating the amount and terms of commitment to the lessor;

4. information from the prospective lessor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;

5. other information supportive of financial responsibility, including financial data, and records concerning lessor performance;

6. publications, including credit ratings and trade and financial journals; and

7. information from other sources, including banks, other financial companies, state departments and agencies, and courts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1022 (May 2000).

§510. Assignment of Proceeds of Lease and Assignment of Lease

A. Assignments of Lease and Assignments of Proceeds of Lease by a lessor must be approved in advance and in writing by the Office of Facility Planning and Control. Real Estate Leasing Section. Approval of a requested assignment shall not be unreasonably or arbitrarily withheld by either party. However, the approval of any assignment of proceeds of lease may be conditioned upon receipt of reasonable assurances from assignee of his ability and willingness to assume responsibility for performance of the terms of the lease in the event of failure of performance by the assignor. Assignment of Lease Forms and Assignment of Proceeds of Lease Forms shall be provided by the Office of Facility Planning and Control, Real Estate Leasing Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1022 (May 2000).

§511. Resolution of Controversies

A. Right to Protest. Any prospective lessor who is aggrieved in connection with the solicitation or award of a contract may protest to Facility Planning and Control.

Protests with respect to a solicitation shall be submitted in writing no later than 10 days prior to the opening of bids. If a person protests a solicitation, an award cannot be made until said protest is resolved. Protests with respect to the award of a contract shall be submitted in writing within 14 days after contract award. Said protest shall state fully and in particular, the reason for protest if a protest is made with respect to the award of a contract. Work on the contract cannot be commenced until it is resolved administratively.

B. Decision. The assistant director, Facility Planning and Control, must notify the protesting party in writing and the legal counsel of the Division of Administration within 14 days after receipt of said protest whether or not the protest is denied or granted. If the protest with reference to the solicitation is granted, the solicitation will be canceled and reissued. If the protest with reference to the award is granted, then the lease will be voided and the remaining solicitations may be re-evaluated for another selection. If another selection cannot be made or if it appears to be in the best interest of the state, a new solicitation will be issued.

C. Appeal. If an aggrieved party is not satisfied with the rendered decision, then that party may appeal said decision in writing to the commissioner of administration within seven days of the decision. The protesting party should fully explain the basis of his appeal. The commissioner then must render a decision in writing within 14 days of receipt of the appeal. The commissioner's decision is final and an aggrieved party may bring judicial action within two weeks from receipt of said decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 11:946 (October 1985), amended LR 22:345 (May 1996), repromulgated LR 26:1023 (May 2000).

§512. Lease Clauses

A. A lease may include clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering such subjects as:

1. the unilateral right of the state to order in writing changes in the work within the general scope of the contract in the drawings, designs, or specifications for space to be furnished;

2. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance; and

3. variations between estimated and actual quantities.

B. A lease may include clauses providing for appropriate remedies covering such subjects as:

1. liquidated damages as appropriate;

2. specified excuses for delay or non-performance;

3. termination of the contract for default; and

4. termination of the contract in whole or in part if sufficient funds have not been appropriated by the Legislature.

C. A lease may also provide that in the event that the lessor fails to fulfill or comply with the terms of any contract, he may be subject to disqualification on future state projects and the chief procurement officer may award the contract to the next lowest responsible bidder, subject to acceptance by that bidder, and charge the difference in cost to the defaulting lessor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1023 (May 2000).

§513. Emergency Procurement

A. The Office of Facility Planning and Control, Real Estate Leasing Section, may make emergency procurements for acquisition of housing space of 5,000 square feet or more when there exists an imminent threat to the public health, welfare, safety or public property.

B. The declaration of an emergency must be made in writing by the Chief Procurement Officer or his designee, fully documenting the nature of the emergency, the circumstances leading up to the emergency and a description of the threat to public health, welfare, safety or public property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1598.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1023 (May 2000).

§514. Sole Source Procurements

A. The Office of Facility Planning and Control, Real Estate Leasing Section may make sole source procurements for acquisition of housing space of 5,000 square feet or more or may amend an existing lease to total in excess of 5,000 square feet or more when the Chief Procurement Officer, or his designee, determines in writing that there is only one source for the required space.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1597.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1023 (May 2000).

§515. Amendments to Leases

A. Additional Space. Any additional space added is to be only that for which the requirement could not reasonably have been foreseen at the time of execution of the lease or the latest option renewal; the additional space provision is not to be used to circumvent the bid law.

1. Leases for Space of Less than 5,000 Square Feet. Any lease for less than 5,000 square feet may be amended by negotiation between the user agency and the lessor. The square footage of such a lease may be increased up to a total of 4,999 square feet with the approval of the Division of Administration. If the amendment causes the space to measure 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is deemed a sole source or emergency procurement.

2. Leases for Space of 5,000 Square Feet or More. Any lease for space of 5,000 square feet or more, may be amended by negotiations between the user agency and the lessor to include up to 4,999 square feet of additional space. Such amendment must also be approved by the Division of Administration. If the amendment adds 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is considered a sole source or emergency procurement.

B. Modifications and Alterations. In the event alterations to or modifications of space currently under lease are required to meet changed operating requirements, a lease may be amended. Such lease amendment may, with the approval of the Division of Administration, provide an adjustment in monthly lease payments not to exceed 25 percent of the original annual lease price per square foot, sufficient to reimburse the lessor for paying for the leasehold improvements. Any adjustment in lease payments shall also require the approval of the Joint Legislative Committee on the Budget. The continuance of a rental adjustment in excess of 25 percent of the original rental rate shall be further contingent on the appropriation of funds in the following fiscal years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1023 (May 2000).

§516. Renegotiation and Renewal of Current Leases

A. Leases of Less than 5,000 Square Feet. If an agency wishes to renew an existing lease of less than 5,000 square feet, it may renegotiate with the present lessor or attempt to obtain proposals from other prospective lessors.

B. Space of 5,000 Square Feet or More. An existing lease for office or warehouse space of 5,000 square feet or more, may be renegotiated with the present lessor, but only after the Division of Administration has entered into a competitive negotiation process involving discussions with at least three offerors who submit written proposals. If less than three written proposals are submitted, the Division of Administration may, nevertheless, hold discussions with those offerors, as well as with the current lessor, but without revealing information gleaned from competing proposals to other offerors. Such proposals shall be solicited by advertising as provided in R.S. 39:1594.C.

C. Evaluation of Proposals. If the commissioner of administration, or his designee, determines after evaluation of the proposals and discussions with the current lessor that to renew the present lease would be in the best interest of the state, an existing lease may be renewed. The commissioner, or his designee, may enter into a lease with one of the other offerors if determined to be in the best interest of the state. In making such a determination, the commissioner, or his designee, shall take into consideration, over the duration of the lease, rental rates, the amount of funds necessary to relocate, any geographical considerations particular to that

state program, the amount of disruption to state business that may be incurred in moving to a new location, and any other relevant factors presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1024 (May 2000).

§517. Revised Statutes and Louisiana Administrative Code

A. These regulations shall be read and interpreted jointly with Chapter 17 of Title 39 of the Revised Statutes and, when not in conflict, with the purchasing rules of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1024 (May 2000).

Chapter 7. Demolition or Disposing of State-Owned Buildings

§701. Preface

A. Act 537 of 1982 enacted R.S. 38:2212.1 to provide for the demolition of state buildings. The statute prohibits the demolition of state buildings unless the appropriate legislators have been notified and unless disposition has been approved by the Office of Facility Planning and Control (FPC). Following are the procedures adopted and promulgated pursuant to this statute.

1. Any state agency proposing to raze, demolish or otherwise dispose of any building or structure owned by the state of Louisiana (except highways, bridges, and railroads), shall first submit such proposal directly to Facility Planning and Control. The request from the user agency must contain the state building identification number, the reason for the request, pictures of the structure, estimated costs involved, the source of funding, the legislative district where the building is located (both senatorial and representative), and information regarding whether the building has been surveyed for asbestos containing materials.

2. Upon receipt of the properly authorized request from the state agency, Facility Planning and Control will notify the legislators representing the district in which the structure is located. This letter from Facility Planning and Control will identify the building or structure, location, reasons for such action, brief description of the work involved and copies of the pictures. In the event that demolition involves historic properties within the city of Baton Rouge, Facility Planning and Control will also notify the state historic preservation officer as required by R.S. 25:781 through 785. A copy of these letters and the attachments are sent to the Louisiana property assistance agency and to the engineering section of Facility Planning and Control. All recipients of such letters are to be assured

that under no conditions shall a request for property disposition be approved by Facility Planning and Control prior to 30 days from the date of the notification letter.

3. After receipt of the letter requesting approval for disposition, a Facility Planning and Control field engineer will make an inspection of the subject building or structure. His report shall include his recommendations regarding disposition, any suggested alternatives or possible use of the structure by other state agencies, and any asbestos abatement activity which may be necessary prior to demolition/disposal.

4. Copies of the field engineer inspection report are sent to the user agency and to the Louisiana Property Assistance Agency. Contents of the report may require a response from the agency.

5. If capital outlay funds are to be used for demolition, Facility Planning and Control will authorize contracts to be awarded for the demolition. When the demolition has been completed, Facility Planning and Control will notify the State Land Office and Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

6. If other than capital outlay funds are to be used, the user agency will be responsible for demolition of the structure in accordance with state purchasing laws and regulations. When the demolition has been completed the user agency must notify the State Land Office and the Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 20:47 (January 1994).

Chapter 9. Public Contracts

§901. Closed Specifications for Certain Products

A. This rule applies to the closing of specifications to products that are necessary to expand or match products in existing systems but for which a person or group of persons possesses the right to exclusive distribution.

B. A closed specification may be submitted and authorized where a person or group of persons possesses the right to exclusive distribution of the specified product when that product is required to expand or extend an existing system at a facility or site if that product is one of the systems listed in §901.B.1-11, or a component of one of them, and the approving authority has determined that all products other than the one specified would detract from the utility of the system; and all other applicable requirements of R.S. 38:2290-2296 have been met:

1. energy management systems;
2. chillers when necessary for refrigerant conversion;
3. fire alarm systems;

4. electronic security systems;
5. elevators;
6. nurse call systems;
7. medical gas systems;
8. stage lighting systems;
9. sound systems;
10. clock systems;

11. brick and stone.

C. It is the responsibility of the approving authority to verify that the product for which the specification is closed is the only acceptable product and to comply with all applicable requirements of R.S. 38:2290-2296.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2290(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 24:333 (February 1998).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part V. Procurement of Professional, Personal, Consulting and Social Services

Chapter 1. Procurement of Professional, Personal, Consulting and Social Services

Subchapter A. General Provisions

§101. Delegation of Authority

A. The director of contractual review may delegate in writing certain responsibilities set forth herein; however, he shall review any actions taken by his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:179 (April 1981), LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985).

§103. Definitions and Classes of Contractual Services

A. The following services shall be contracted out in accordance with these regulations.

1. *Personal Services* Work rendered by individuals which requires use of creative or artistic skills, such as but not limited to graphic artists, sculptors, musicians, photographers, and writers, or which requires use of highly technical or unique individual skills or talents, such as, but not limited to, paramedics, therapists, handwriting analysts, foreign representatives, and expert witnesses for adjudications or other court proceedings. A *foreign representative* shall mean a person to represent the Department of Economic Development in such foreign country.

2. *Professional Service* Work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skill. For contracts with a total amount of compensation of \$50,000 or more, the definition of "professional service" shall be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, claims adjusters, and any other profession that may be added by regulations adopted by the Office of Contractual Review of the Division of Administration.

3. *Consulting Service* Work, other than professional, personal or social service, rendered by an independent contractor who possesses specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advice in formulating or implementing programs or services or improvements in programs or services, including, but not limited to, such areas as management, data processing, advertising and public relations.

a. Includes the procurement of supplies and services by a contractor without the necessity of complying with provisions of the Louisiana Procurement Code when such supplies and services are merely ancillary to the provisions of consulting services under a contingency fee arrangement, even though the procurement of supplies or services directly by a governmental body would require compliance with the Louisiana Procurement Code. Supplies or services ancillary to the provision of consulting services are those supplies or services which assist the contractor in fulfilling the objective of his contract where the cost for such supplies and services, is less than the cost of providing consulting services, as determined by the using agency. No contract for consulting services as defined in this Paragraph shall be entered into unless it has been approved in advance by the Joint Legislative Committee on the Budget.

4. *Retroactive Claims Recovery Services* Those consulting services where third party coverage identification and verification represent the primary services, and any operations type activities such as data processing and/or claims submission are merely incidental to the total work tasks to be performed, and where such services will result in revenue enhancement to the state through a contingency fee arrangement. The RFP process for this type of consulting service shall require that at least 50 percent of total weighted criteria for evaluation be allocated to cost.

5. *Social Service* Work rendered by a person, firm, corporation, organization, governmental body, or governmental entity in furtherance of the general welfare of the citizens of Louisiana, including but not limited to the following objectives.

a. Rehabilitation and Health Support. Services rendered by a contractor with special knowledge or service available to assist individuals to attain or maintain a favorable condition of physical and/or mental health. These services include but are not limited to health-related counseling; alcohol or drug abuse training and treatment; training to support emergency medical services; services to support family planning; counseling, delinquency prevention; genetic disease evaluation and counseling,

community-based medical support services; evaluation and training for physically/mentally handicapped; and other services in support of same.

b. **Habilitation and Socialization.** Services rendered by a contractor with special knowledge to assist specified client groups to enhance their self-sufficiency or alleviate their dependency and/or isolation from the community. Services include but are not limited to day care; work and training; early intervention for the mentally retarded, developmentally delayed, or physically handicapped; transportation for service access; homemaker home management, and housing improvement services; in-home and out-of-home respite care; socialization services for low income and other special needs groups; nursing home ombudsman; nutritional, employment, case management, senior center activities, or other services to aid independent living by the elderly, and training and community planning services for same.

c. **Protection for Adults and Children.** Services rendered by a contractor to provide therapeutic intervention for adults or children who are in danger of or threatened with danger of physical or mental injury, neglect, maltreatment, extortion, or exploitation, including victims of family violence. These services include but are not limited to community planning for neglect/abuse; adoption; substitute care; education and training; crisis intervention type services; emergency shelter for victims of rape/family violence or services in support of same; and training and valuation services for same.

d. **Improvement of Living Conditions and Health.** Services rendered by an authorized contractor with special knowledge or services available to assist individuals to attain or maintain favorable conditions in which to live. These services include but are not limited to:

i. distribution of foodstuffs either purchased or that are made available from government-owned commodities;

ii. determining the needs of the poor, and development of programs to distribute the available resources;

iii. determining the needs of the poor and identifying programs to alleviate these poverty conditions;

iv. providing services to respond to the educational/ employment needs of eligible individuals in the communities needing these services. The primary purpose of this service is to provide the participating individuals with the skills necessary for them to advance socially, academically, and occupationally; and

v. providing training for and evaluation of any of the above services.

e. **Evaluation, Testing, and Remedial Educational Services for Exceptional Handicapped or Learning Disabled Nonpublic School Students.** Services rendered by a contractor with special knowledge or services available to provide special educational and related services for

exceptional or handicapped students voluntarily enrolled in approved nonpublic schools of Louisiana who are not otherwise provided with such services through either their local school program or through other services afforded to them by local school boards or other public agencies. These services may include but are not limited to identification, assessment, appraisal, and evaluation of exceptional or handicapped children; development of individualized education programs; and the providing of instructional and supportive services to such eligible students in accordance with the provisions of R.S. 17:1941, et seq., (Act 754 of 1977) and P.L. 94-142 and their regulations.

6.a. **Performance-Based Energy Efficiency Contract**—a contract for energy efficiency services and equipment in which the payment obligation for each year of the contract is either:

i. set as a percentage of the annual energy cost savings attributable to the services or equipment under the contract; or

ii. guaranteed by the person under contract to be less than the annual energy cost savings attributable to the services or equipment under the contract.

b. Any state agency, board, or commission may enter into a performance-based energy efficiency contract for services and equipment. Any such agency, board, or commission shall contact the Division of Administration for assistance in preparation of the requests for proposals, analysis of the proposals, and development of the contract. The contract shall be considered a consulting services contract.

c. Performance-based energy efficiency contracts shall be awarded through a request for proposal process. Any performance-based energy efficiency contract entered into shall be for a period not to exceed 10 years and shall contain a guarantee of energy savings.

7. Interagency contracts between governmental entities as defined in R.S. 39:1484(23) for any of the services enumerated in Paragraphs 1, 2, 3, 4, 5 or 6 above shall be governed by these regulations, except that contracts between boards of higher education and their respective institutions shall be exempt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), LR 13:652 (November 1987), LR 17:264 (March 1991), LR 20:542 (May 1994).

§106. Contracts for \$10,000 or Less

A. The director of the Office of Contractual Review may, in accordance with R.S. 39:1488, 1490.B(3), and 1508, delegate to other state-using agencies certain responsibilities in the review and approval process of professional, personal, consulting and social services contracts, to specifically include contracts for professional, personal, consulting and

social services for \$10,000 and under. Such delegations of authority may be made upon written request by the head of the using agency and shall be provided for in a written Memorandum of Agreement between the Office of Contractual Review and each using agency receiving such a delegation. All provisions of law and of these regulations not delegated remain applicable. Upon execution of the Memorandum of Agreement as herein provided, such delegation of authority shall remain in full force and effect, until it may be canceled in writing, by the director of the Office of Contractual Review.

B. A contract meeting the definition of *small purchase* under R.S. 39:1508 may be approved by the agency director without the necessity of forwarding a copy to the Office of Contractual Review. The agency shall maintain a file for all small purchase contracts. This file shall be available for inspection by the director of the Office of Contractual Review or his designee upon request.

C. The using agency shall submit a quarterly report to the Office of Contractual Review. This report shall contain a listing of all small purchase contracts to include: the name of contractor, amount of contract, specific nature of services rendered, date of contract, and total dollar amount of all small purchase contracts entered into by the using agency for that quarter. If no such contracts have been entered into during this period, a report shall still be submitted notifying the Office of Contractual Review of same. See Appendix E for format of report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:179 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1068 (November 1985), LR 17:265 (March 1991).

§109. Contract Contents

A. Each contract for professional, personal, consulting and social services shall follow the provisions of R.S. 39:1498.1.

B. Contracts funded fully or in part by federal funds, in addition to meeting all the requirements of these guidelines and R.S. 39:1428-1473, shall meet all applicable federal standards and shall contain all necessary clauses required by federal statutes, rules or regulations. The burden of complying with federal regulations shall rest with the using agency.

C. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49 (the state general travel regulations, LAC 4, Part V). Persons performing services under contracts approved by the Office of Contractual Review shall be considered to be other persons under LAC 4:V.1503.C.3 (the state general travel regulations).

D. When a contract is to include travel and other reimbursable expenses, it shall contain language to effect the following:

1. travel and other reimbursable expense shall constitute part of the total maximum payable under the contract. Travel expenses shall be reimbursed in accordance with Administration Policy and Procedure Memorandum 49 (PPM 49), LAC 4, Part V; or

2. no more than (a certain sum) of the total maximum amount payable under this contract shall be paid or received as reimbursement for travel and other reimbursable expenses. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49, LAC 4, Part V.

E. If the using agency desires to reimburse the contractor other than in accordance with rates established in Policy and Procedure Memorandum 49, LAC 4, Part V, such reimbursement must be approved by the commissioner of administration as a waiver to the requirements of PPM 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985).

§112. Modification of Contract

A. All amendments to contracts for professional, personal, consulting and social services shall be submitted to the Office of Contractual Review and shall become effective only upon approval by the director of the Office of Contractual Review. If an amendment extends a contract beyond one year, justification for a multi-year contract must be submitted with said amendment in accordance with §133.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987).

§115. Termination of Contract

A. Whenever a contract is terminated prior to the termination date stated in the contract, the Office of Contractual Review shall be notified in writing by the using agency of such prior termination, and the reasons therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985).

§118. Submission of Contracts

A. The original contract and at least one copy of said contract and attachments shall be submitted to the Office of Contractual Review. The Office of Contractual Review shall submit a list of all contracts for \$25,000 or more to the Legislative Fiscal Office. Copies of such contracts shall be forwarded to the Legislative Fiscal Office upon request. The

Office of Contractual Review will not accept for review and approval any contract that is not accompanied by the necessary attachments and copies as required herein. (Attachments being submittal letters, R.S. 39:1497 certification, BA-22, etc.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987).

§121. Contractual Review Process

A. Contracts arriving in the Office of Contractual Review will be date stamped and logged in. Contracts should be submitted prior to their effective dates and no contract shall be approved which has been submitted 60 days after its effective date unless written justification is provided by the using agency and approval granted by the director of contractual review or his designee. All submittals will be required to have a cover letter attached thereto in conformity with Appendix D of this Part.

B. If a contract does not appear to be out of the ordinary and appears to have the necessary attachments and inclusions, it will be routed as appropriate to the Division of Administration budget analyst for the submitting agency. A BA-22, or its equivalent, shall be submitted with every contract submitted to the Office of Contractual Review, which contains any expenditures or reduction in expenditures.

C. Contracts that are incomplete as to form may be returned to the submitting agency. If a contract is merely missing an attachment then the necessary attachment may be secured from the submitting agency.

D. Contracts Returned from Budget

1. Not Recommended for Approval. If a contract is not recommended for approval, the Office of Contractual Review shall discuss the reason with the budget analyst. If the problem cannot be resolved, the contract shall be returned to the submitting agency with a letter explaining the problem.

2. Recommended for Approval. If a contract is recommended for approval the review process shall continue.

E. Legal and Content Review. There are a number of different types of contracts, and content requirements may vary a little. All contracts shall contain the following:

1. signatures of both the head of the using agency or his designee and the contractor. At least one submitted copy of each contract shall bear an actual, nonfacsimile signature of each party;

2. contractor name and address (including zip code);

3. scope of services that clearly and completely identifies the work to be performed and products to be delivered;

4. beginning and termination dates for the contract. Normally, such contracts should be for a term no longer than one year, although the director of Contractual Review may approve contracts with terms up to three years. Contracts shall not include a clause permitting automatic renewal or extension of the original beyond a three-year period, unless authorized by the funding statute. Per R.S. 39:1496.1(c), performance-based energy efficiency contracts shall have a term not to exceed 10 years;

5. the maximum amount of compensation to be paid under the contract. This maximum must be inclusive of all payment, fees, travel expenses, etc. When applicable, the amounts shall be stated by category and then given as a comprehensive total. The payment schedule shall be given also;

6. a statement giving the legislative auditor and/or the Office of the Governor, Division of Administration auditors authority to audit the financial records of the contractor relative to work done under the contract. A clause referencing audit requirements given in R.S. 24:517 is advisable for contractors who may be considered "quasi-public;"

7. a clause providing that the contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the submitting agency thereto, provided, however, that claims for money due or to become due to the contractor from the using agency under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to both the using agency and the director of the Office of Contractual Review;

8. the Office of Contractual Review shall notify the using agency in writing when an assignment of proceeds notice has been received from a contractor;

9. a statement giving the contractor the responsibility for paying any taxes which may be due as a result of the contract. The taxes could include state or federal income taxes or payroll taxes;

10. advance payments on all contracts except those for professional services are allowable if limited to less than or equal to 20 percent of the contract amount and if necessary to provide for the lowest cost delivery of service:

a. all such advances shall be approved by the director of the Office of Contractual Review. If federal funds are to be advanced, federal guidelines shall prevail on the conditions and amount of the advance. Specific state statutory authority may override the 20 percent limit for certain contracts;

b. when submitting for approval a contract including provisions for an advance, the using agency shall submit the following additional information at a minimum:

i. certification by the using agency that the procurement of the services involved at the lowest cost requires the advance and that no other source of funding is available;

ii. provisions in the contract specifying the amount and timing of the payments and safeguarding repayment of the advance.

F. Each contract over \$5,000 submitted for approval shall be accompanied by a certification letter as described in R.S. 39:1497, signed by the using agency's representative (see Appendix B of this Part).

G. Proof of review and approval by other agencies shall accompany submitted contracts as follows; or contracts will be returned to the submitting agency without final approval.

1. Civil Service. All contracts must have Civil Service approval unless exempted by the Department of Civil Service.

2. Attorney General. Contracts for legal services that are not consulting work and that do involve or lead to litigation must be reviewed by the attorney general in accordance with R.S. 49:258. Approval of the attorney general can be evidenced by the signature on the contract documents or by a letter from the attorney general. Contracts with Louisiana district attorneys do not require this approval.

3. Legislative Auditor. Contracts for financial auditing of state agencies must have prior written approval of the legislative auditor.

4. If the contractor is a corporation not incorporated under the laws of the state of Louisiana, then the contractor must secure a certificate of authority pursuant to R.S. 12:301-302 from the secretary of the state of Louisiana and verification of such certificate must be made available to the Office of Contractual Review.

5. The Office of Telecommunications Management shall review and recommend any contract containing elements of telecommunication services before returning it to the Office of Contractual Review for completion of the analysis.

H. Consulting Services Contracts for \$50,000 or More. If a contract is for services defined as consulting in R.S. 39:1484(4) and is for an amount equal to or exceeding \$50,000, it must have been awarded pursuant to the requirements of R.S. 39:1503, unless exempt by §142. Failure to so comply shall result in the using agency having to reconduct the process. A statement in accordance with R.S. 39:1503.C as to why the award was made must be submitted with the contract.

I. Data processing consulting service contracts for more than \$100,000 shall be procured in accordance with Subchapter C of these regulations.

J. Social Services Contracts for \$150,000 or More During a 12-Month Period. If a contract is for services defined as social services in R.S. 39:1484(24), it must have been awarded pursuant to the requirements of R.S. 39:1503 unless exempt by R.S. 1494.1. Failure to so comply shall result in the using agency having to reconduct the process. A statement in accordance with R.S. 39:1503(c) as to why the award was made must be submitted with the contract.

K. When a contractor is a corporation, a formal, dated board resolution must be secured and attached to the contract indicating that the signatory is a corporate representative and authorized to sign said contract.

L. When it has been determined that a contract is complete, the contract shall be returned to the submitting agency with an approval letter attached and signed by the director of Contractual Review.

M. A performance evaluation for every personal, professional, consulting or social services contract shall be done by the using agency in accordance with R.S. 39:1500. This performance evaluation shall be retained by the using agency for all small purchase contracts approved under delegated authority. For all other contracts this performance evaluation shall be submitted to the Office of Contractual Review within 120 days after the termination of the contract. An example evaluation form can be found in Appendix F of this Part. Using agencies should use their own formats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39: 1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:182 (April 1981), amended LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1069 (November 1985), LR 13:87 (February 1987), LR 13:653 (November 1987), LR 15:81 (February 1989).

§124. Exempt Occupations

A. The following list of occupations shall be construed as falling within the definition of medical, nursing or allied health fields given in R.S. 39:1498.2. Personnel employed in these fields would therefore be exempt from the prohibition contained in R.S. 39:1498(4) which disallows personal, professional, consulting or social services contracts between the state of Louisiana and state employees:

1. audiologist;
2. dental assistant;
3. dentist;
4. electroencephalograph technician;
5. emergency medical technician;
6. hospital chaplain;
7. inhalation therapist;
8. medical laboratory technologist;
9. accredited medical records technician/
administrator;
10. nurse anesthetist;
11. occupational therapist;
12. optometrist;
13. osteopath;
14. pharmacist;
15. psychologist;

16. physical therapist;
17. physician;
18. podiatrist;
19. practical nurse;
20. professional dietitian;
21. psychiatrist;
22. radiologic technologist;
23. radioisotope technologist;
24. registered nurse;
25. rehabilitation counselor;
26. respiratory therapy technician;
27. respiratory therapy technologist;
28. social worker;
29. speech pathologist;
30. ultrasonography technologist.

B. Other specialists as may be included later by the director of the Office of Contractual Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), LR 15:82 (February 1989), LR 17:266 (March 1991).

§127. Delegation of Signature Authority

A. R.S. 39:1502 requires that the head of the using agency or his designee shall sign all contracts for personal, professional, consulting or social services. All delegations of signature authority by the head of the using agency must be in writing and must be approved by the Office of Contractual Review. Normally delegations of signature authority to the level of assistant secretary or equivalent will be approved if circumstances warrant the delegation. Delegations of signature authority to a level below that of assistant secretary may be granted in unusual situations, for example, where the volume of contracts is very heavy.

B. In addition, autonomous or semi-autonomous boards or commissions may sign their own contracts if such authority is granted them by their enabling legislation or by the heads of the agency in which they are placed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985).

§130. Confidentiality of Technical Data or Trade Secrets

A. The using agency shall be responsible for protecting technical data, financial information, overhead rates, and trade secrets which may come into their possession from individuals and businesses doing business with the state.

Any such information received by the Office of Contractual Review shall be returned to the using agency upon completion of said review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:457 (June 1984), LR 11:1070 (November 1985).

§133. Multi-Year Contracts

A. Contracts in excess of one year shall be submitted to the Office of Contractual Review with written reasons why a multi-year contract is needed. Justification of multi-year contracts shall be submitted in accordance with R.S. 39:1514 in compliance with the delegation of authority from the commissioner of administration.

B. Any contracts which cross fiscal years should contain a funding-out clause in accordance with R.S. 39:1514.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 17:266 (March 1991).

§134. Cost Reimbursement Contracts

A. If a nongovernmental provider is expected to receive \$100,000 or more per year of state funds via one or more cost-reimbursement contracts, then those contracts shall contain at least one of the following requirements:

1. source documentation verification (evidenced by invoices, canceled checks, certified payroll sheets, etc.) shall be submitted to the state to justify each payment request; or

2. utilizing internal auditors, the using agency shall perform frequent, unannounced contract compliance audits of the contractor. "Frequent" shall mean no less than once per contract or per 12 months if the contract is longer than 12 months and all disallowed expenditures shall be reimbursed to the using agency; or

3. the contract shall require the contractor to obtain a contract compliance audit of expenditures charged to the contract. This compliance audit shall be performed by a certified public accountant or the Louisiana legislative auditor's office. A contract compliance audit must include an examination of reimbursed expenditures to determine if they are in accord with contract terms, not reimbursed by any other source, and in accord with any guidelines set by the using agency or other relevant authority. This examination shall be conducted in accordance with generally accepted auditing and sampling procedures, including the *Government Auditing Standards* ("Yellow Book"). See Appendix G of this Part for sample opinion letter for this contract compliance audit.

- a. Such an audit may be performed in conjunction with a financial audit, but results must be available to the using agency within 12 months after the fiscal year end of

the contractor. It is the intention of this rule not to require audits at a different time of year if annual audits are currently being performed. Thus, a contract period may be covered by two separate audits.

b. For multi-year cost-reimbursement contracts, the provider may with the using agency's consent, elect to have a multi-year contract compliance audit done to cover the entire contract period.

c. If a single provider has multiple cost-reimbursement contracts subject to the requirements of § 134, then the provider may elect to have an audit done using the single audit model. In these instances, a major state contract means any state contract for which expenditures during the year exceed the greater of \$100,000 or three percent of such total expenditures.

d. All disallowed expenditures shall be reimbursed to the using agency. Such disallowances shall normally be recouped by the using agency in current or future contracts with the provider. For cost-reimbursement contracts, any audit of the contract period issued pursuant to the Single Audit Act of 1984, P.L. 98-502, OMB Circular A-110, or other federal legislation and regulations, shall fulfill the audit requirements of this Paragraph 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B) and 39:1521.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 15:82 (February 1989).

§136. Determination of Responsibility

A. In order to qualify as responsible, an offerer must meet the following standards as they relate to the particular procurement under consideration:

1. has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;

2. has the necessary experience, organizations, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);

3. is able to comply with the proposed or required time of delivery or performance schedule;

4. has a satisfactory record of integrity, judgment and performance (contractors who are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall in the absence of evidence to the contrary or evidence of compelling circumstances, be presumed to be unable to fulfill the requirement);

5. is otherwise qualified and eligible to receive an award under applicable laws and regulations.

B. An offerer shall present acceptable evidence of financial resources, experience, organization, technical qualifications, skills, and facilities, to perform the service called for by the contract.

C. No contract for consulting services for \$50,000 or more, or for social services for \$150,000 or more shall be awarded to any person or firm unless the head of the using agency has first determined that such person or firm is responsible within the meaning of Subsections A and B.

D. In any case where a contract for consulting services is for \$50,000 or more, or where a contract for social services is for \$150,000 or more, the head of the using agency shall prepare, sign, and place in the contract file a statement of the facts on which a determination of responsibility was based. Any supporting documents or reports and any information to support determinations of responsibility of the offerer or potential subcontractors should be kept on file with the agency, subject to inspection upon the request by the director of contractual review or his designee.

E. Before making a determination of responsibility, the head of the using agency shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in Subsections A and B. Information from the following sources shall be utilized before making a determination of responsibility:

1. information from the prospective contractor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;

2. other existing information within the agency, including financial data, the list of debarred and ineligible bidders and records concerning contractor performance;

3. publications, including credit ratings and trade and financial journals;

4. other sources, including banks, other financial companies, and state departments and agencies.

F. To the extent that a prospective contractor cannot meet the standard in Paragraph A.2 except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the head of the using agency to satisfy that standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 13:654 (November 1987).

§139. Suspension, Debarment and Reinstatement

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the director of the Office of Contractual Review shall have authority to suspend or debar a person for cause from consideration for a contract, provided that doing so is in the best interest of the state.

B. Suspension. The director of the Office of Contractual Review may suspend a person from consideration for a contract if he determines in writing that there is probable

cause to believe that such person has engaged in any activity which might lead to debarment. Said suspension shall not exceed 60 days if debarment is not forthcoming.

C. Causes for Debarment. The causes for debarment include, but are not limited to the following:

1. conviction for a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

3. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

4. violation of contract provisions, or a recent record of failure to perform, or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and

5. any other cause the director of Contractual Review determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.

D. Decision. The director of the Office of Contractual Review shall issue a written decision stating his reasons and findings therein.

E. Notice of Decisions. A copy of the decisions under Subsection D of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

F. Finality of Decision. A decision under Subsection D of this Section shall be final and conclusive, unless appealed as provided for in Subsection G.

G. Appeal. The contractor or business who is directly affected by the decision of the director of Contractual Review may appeal in writing to the commissioner of administration within 10 days of the receipt of said decision.

H. Reinstatement

1. If the commissioner finds that the director of Contractual Review was in error, then he may reinstate said individual or business. If the commissioner affirms the decision of the director of Contractual Review that decision is final and conclusive.

2. The director of Contractual Review, upon request of a debarred contractor, shall review the requesting debarred contractor's file on an annual basis, and may reinstate said

contractor for future consideration if he believes the circumstances warrant reinstatement and it would be in the best interest of the state. A list of debarred contractors shall be kept by the Office of Contractual Review and made available upon request to state agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:594 (November 1982), amended LR 10:458 (June 1984), LR 11:1071 (November 1985).

Subchapter B. Contracts Let Via a Request for Proposals Process

§142. Source Selection Methods

A. Pursuant to R.S. 39:1494-1496 professional or personal services contracts for any amount, consulting services contracts less than \$50,000, and social services contracts meeting one of the requirements of R.S. 39:1494.1.A may be awarded without competitive negotiation or bidding, therefore this Section shall be applicable to consulting services contracts for \$50,000 or more and social services contracts for \$150,000 or more which are not exempted by R.S. 39:1494.1.A.

1. Emergency Purchases. An emergency situation must be determined in writing by the director of Contractual Review or his designee. The using agency which requests an emergency procurement must indicate in writing the basis of the emergency.

2. Sole Source Procurement. A determination in writing, supported by using agency documentation, must be made by the director of Contractual Review or his designee that only one source exists for the services requested by the using agency.

3. A determination by the director of Contractual Review that contracts are necessary under Paragraph 1 or 2 above will dispense with the requirement of a request for proposal pursuant to R.S. 39:1496.B and R.S. 1494.1.B.

4. Record. A record of emergency procurements and sole source procurements shall be maintained by the Office of Contractual Review, and shall contain:

- a. contractor's name;
- b. the amount of the contract;
- c. services to be rendered;
- d. reason for the emergency or sole source procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:179 (April 1981), amended LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1071 (November 1985), LR 13:655 (November 1987).

§145. Request for Proposals

A. Unless otherwise stated, this Section applies to Requests for Proposals (RFP) for both consulting and social services contracts.

1. Prequalification of Offerers for Consulting Services Contracts Only. A using agency which intends to issue a RFP shall request the prequalified offerers list, as described below, prior to issuing an RFP. A using agency shall forward a notice of the request for proposals to those businesses on said list who offer the services requested in the RFP.

a. The Office of Contractual Review shall prepare and maintain a prequalified list of offerers to be used in the request for proposal procedure as provided for in R.S. 39:1506.

b. Contractors who are interested in being placed on this list shall submit a statement of qualifications to the Office of Contractual Review. This statement must describe the potential contractor's current qualifications by subject area and include key personnel currently employed or associated, and be accompanied by a resumé of each. Additionally, a list should be provided describing previous work done (by subject area), with whom (governmental agency or private business) and the names of contact persons for each client listed.

c. Each statement of qualifications shall have attached to it a financial statement or other evidence of financial solvency.

d. Finally, any other current information or material which would further describe a potential contractor's qualifications will be accepted.

2. Notice to Social Service Proposers. Written notice shall be mailed to persons, firms or corporations who are known to be in a position to furnish such social services, at least 14 days before the last day that such proposals will be accepted. This requirement is subject to reasonable limitation at the discretion of the using agency.

3. Advertisements. Written notices shall contain a general description of the consulting or social services desired and state the name and address of the using agency desiring to contract for consulting or social services; where and how the request for proposal may be obtained and where proposals are to be sent; in the event of a proposer's conference, the date, time and place it will be held; the date and time not later than which proposals must be received; and the date, time, and place that a proposal may be accepted.

4. Questions to be received from potential contractors must be in writing and all responding answers must be provided by the using agency to all potential contractors participating in the selection process. A proposer's conference may be provided in lieu of the above question-and-answer process. However, copies of the proceedings shall be made available to all those who are participating in the selection process.

5. Written or oral discussions shall be conducted by the using agency with all responsible offerers who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerers. Discussions need not be conducted:

a. with respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or

b. where time of delivery or performance will not permit discussions; or

c. where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular service that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerers of the possibility that an award may be made on the basis of the initial offers.

6. In addition to the requirements of R.S. 39:1503 and these regulations, a request for proposals shall:

a. specifically define the task and desired results of project;

b. identify agency liaison personnel and resources available to the contractor, both in preliminary studies and the actual services;

c. state approximately when the contractor can begin the work, plus an estimate of the time necessary to accomplish the work, if applicable;

d. specify applicable procedures concerning billing, documentation requirements, progress reports, and final reports, if applicable;

e. specify that a minimum of two copies of the proposal be submitted;

f. inform the potential contractors of the criteria and the selection methodology and the weight which will be applied to each significant evaluation criteria to be used in evaluating the proposals' responsiveness to the RFP;

g. require potential contractors to include the following information in their proposals:

i. a description of the firm's qualifications to include a specific list of personnel to be used in the services and their qualifications (at least list the number and the qualifications of each position). However, a résumé will be required on each of the key personnel. Additionally for consulting services, the contractor must stipulate that these personnel will not be removed from the contract without prior approval of the using agency;

ii. a list of the agencies with names and contact persons, for whom similar work has been done;

iii. if applicable, the length of time needed for the services, broken down by phases, if phasing is necessary;

iv. the proposed methodology for accomplishing the services with a precise statement of what the state will receive as an end product of the services (this is sometimes referred to as the technical section of the proposal);

v. for consulting services only, an itemized cost statement showing various classes of man-hours at appropriate rate, delineated by phases, if phasing is used, and an itemized listing of all other expenses or fees that are expected to be paid by the state and a complete breakdown of consultant overhead rate, if applicable;

vi. for social services only, a detailed budget or other cost breakdown as may be required by the using agency and/or the federal government.

7. The final selection of a contractor shall be made by the using agency in accordance with the selection criteria established in the RFP. However, no contract may be enforced against the state until approval of the contract has been granted by the director of the Office of Contractual Review. When a final selection has been made by the using agency, the contract file containing that information outlined in Paragraphs 1-6 above, including the request for proposals, and the proposed contract, along with a selection memorandum justifying the final selection shall be sent to the Office of Contractual Review for final concurrence (R.S. 39:1503.C. The selection memorandum shall include, but not be limited to:

a. a list of criteria used along with the weight assigned each criteria;

b. scores of each proposal considered in each of the categories listed above along with overall scores of each proposal considered;

c. a narrative justifying selection.

8. Right to Protest. Any contractor who is aggrieved in connection with the request for proposal or award may protest to the head of the agency issuing the proposal, at which time the agency shall notify the Office of Contractual Review that a protest has been lodged. Said protest shall be in writing and state fully the reason(s) for the protest. A protest of a consulting service solicitation must be filed at least 14 days prior to the date for receipt of proposals. A protest of a social service solicitation must be filed at least seven days prior to the date for receipt of proposals. Protests with respect to an award shall be submitted within 14 days after the award has been announced by the agency.

9. Stay of Award During Protest. If a person protests the request for proposal, then an award shall not be made until said protest is resolved. If a person protests an award, then work on the contract shall not be commenced until the protest is resolved administratively.

10. Decision. The head of the agency must notify the protesting party within 10 days after receipt of said protest whether or not the protest is denied or granted. If granted as to the proposal the request for proposal may be amended if possible or canceled and reissued. If the protest is granted as

to the award then the contract will be voided and the remaining proposals may be re-evaluated for another selection. If another selection can not be made or if it appears to be in the best interest of the state, a new request for proposal shall be issued.

11. Appeal. If an aggrieved party is not satisfied with the agency's decision, then that party may appeal said decision in writing to the commissioner of administration. Such appeals must be made within 14 days of receipt of the agency's decision by the protesting party. The protesting party should fully explain the basis of his appeal. The commissioner then must render a decision in writing within 10 days of receipt of the appeal or the date of the hearing. The commissioner's decision is final and an aggrieved party must bring judicial action within six months from receipt of said decision; an agency may proceed with an award after the commissioner so decides.

12. Delays. The delays provided for in this Part may be extended only with the concurrence of the using agency, the protesting party and the commissioner of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985).

§147. Contracts for Data Processing Consulting Services

A. Contracts for data processing consulting services in an amount equal to or greater than \$50,000 shall be subject to all the statutory and regulatory requirements generally applicable to consulting services contracts equal to or greater than \$50,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), LR 13:655 (November 1987).

Subchapter C. Contracts for Data Processing Consulting Services in an Amount Greater than \$100,000

§149. Procurement Support Team

A. A procurement support team shall be formed in accordance with the procedures defined herein for every contract for the procurement of data processing consulting services in an amount greater than \$100,000. The formation of a procurement support team shall be accomplished by the Office of Contractual Review and shall include one or more representatives from each of the following: the Office of Contractual Review, the Attorney General's Office; the using agency initiating the procurement action; and the Legislative Fiscal Office. The procurement support team shall submit a recommendation to the director of the Office of Contractual Review concerning the final contract.

B. At least two members of each procurement support team should have formal training in computer contract negotiations. The Legislative Fiscal Office and the Attorney General's Office shall each designate in writing to the Office of Contractual Review the names of a primary and an alternate team member, and should insure that at least one of these individuals has received formal training in computer contract negotiations. It shall thereafter be the responsibility of each named agency to keep the Office of Contractual Review advised of any changes in designated individuals. At least four members, one from each office designated, must be present to constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985).

§151. Procurement Support Team Involvement

A. Procurement support team participation must include, as a minimum, review of the request for proposals, review of using agency evaluation of proposals and award of contract, and review and/or negotiation of contract terms. Procurements requiring a procurement support team will involve the active participation of all of the members of the procurement support team as a unit. There will be at least one joint meeting per phase during the process. The procurement support team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. The team leader will be designated by the Office of Contractual Review.

B. All data processing consulting service contracts in an amount greater than \$100,000 shall be subject to the statutory and regulatory requirements for consulting service contracts in general. The recommendation of a procurement support team member is not to be construed as approval by the agency which that team member represents, in those cases where formal agency approval of the final agreements is required.

C. In situations where formal negotiations with prospective contractors, or a successful proposer, is appropriate, such negotiations will be conducted by a negotiations team appointed by the procurement support team leader. One member of the negotiating team will be designated as lead negotiator. The results of such negotiations will, of course, be subject to all statutory required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in computer contract negotiations.

D. The individual agencies represented on procurement support teams will have the following primary responsibilities. The responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of Contractual Review.

1. Legislative Fiscal Office. The Legislative Fiscal Office shall have primary responsibility for the financial analysis of RFP's, and review of funding procedures, and certification of specific appropriation for the purpose prior to the final contract award.

2. Attorney General's Office. The Attorney General's Office shall have primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, reviewing to insure compliance with statutes and regulations, and legal negotiations.

3. Office of Contractual Review. The Office of Contractual Review shall have primary responsibility for insuring compliance with RFP procedures and regulations.

4. The Using Agency. The using agency shall have primary responsibility for the determination of the compliance of proposals with the functional requirements, drafting of the requests for proposals, the evaluation of proposals, the award of the contract and for all management decisions at each phase of the procurement process.

5. The Office of Information Resources shall provide technical staff to the procurement support team. They shall provide advice and support in the area of data processing techniques, negotiation techniques, and reviewing the structure and content of requests for proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985).

§154. Emergency and Sole Source Procurements

A. Notwithstanding the guidelines established in §142, procurements of data processing consulting services in an amount greater than \$100,000 under emergency or sole source conditions shall involve a procurement support team designated by the Office of Contractual Review and under the direction of a team leader designated by the Office of Contractual Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985).

§157. Procurement Support Team; Procurement Schedule

A. Each using agency contemplating a contract requiring more than \$100,000 of data processing consulting services shall write the director of the Office of Contractual Review notifying him prior to the drafting of the request for proposals. The Office of Contractual Review shall then contact the appropriate agencies and obtain from those agencies the names of the individuals designated to participate on the particular procurement support team

(PST). The Office of Contractual Review shall then designate a team leader, insure that at least two members of the procurement support team have received formal training in computer contract negotiations, and forward to the team leader the names of the other team members, along with any information received from the using agency.

B. The team leader will establish a schedule for the procurement activity, define the role and task of each team member, and establish a project file. The using agency and all team members are responsible for insuring that the team leader receives a copy of all correspondence and documentation.

C. At the end of the procurement process one copy of the documentation related to the procurement will be retained on file by the Office of Contractual Review. The team leader will make written status reports at the end of each phase to the Office of Contractual Review. Such status reports shall be presented to the Office of Contractual Review at each regular meeting.

D. Each member of the procurement support team must review as a minimum the request for proposals, the using agency's proposal evaluation, the award of contract and the final contract. As a minimum, this review must be indicated by the signature of each team member. Where team evaluations are made, each PST team member must sign the evaluation, or his designating or qualifying reports.

E. In the event that a PST team member indicates acceptance or concurrence with any activity, and that PST team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual PST team member must submit to the team leader written reasons for their actions. The PST team leader shall file these documents in the final activity file.

F. After a procurement process has been completed, PST team members and the using agency are encouraged to submit written evaluations and comments of the process, and suggestions for future improvements. Such evaluations, comments, and suggestions shall be sent to the Office of Contractual Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985).

Subchapter D. Revised Statutes

§187. Revised Statutes

A. These regulations shall be read and interpreted jointly with R.S. 39:1481-1526.

B. A rule or regulation shall not change any contract commitment, right, or obligation of the state or of a contractor under a state contract in existence on the effective date of that rule or regulation [R.S. 39:1491.D].

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:183 (April 1981), LR 8:596 (November 1982), LR 10:461 (June 1984), LR 11:1074 (November 1985).

Appendices

Appendix A. Sample Contract

Sample contract adaptable for use by state agencies. (This sample contract contains the minimum language required in a state contract. Additional items may be added as required by the individual agency's needs and applicable federal requirements.)

STATE OF LOUISIANA

PARISH OF _____

CONTRACT

Be it known, that on this ____ day of _____, 20 __, the _____ (Agency Name) _____ (hereinafter sometimes referred to as "state") and _____ (contractor's name and legal address including zip code) _____ hereinafter sometimes referred to as "Contractor") do hereby enter into contract under the following terms and conditions.

1.

Contractor hereby agrees to furnish the following services:

(If the Scope of Services is more lengthy than will fit here, it may be attached separately as an addendum.)

2.

In consideration of the services described above, state hereby agrees to pay to contractor a maximum fee of _____. Payment will be made only on approval of _____. If progress and/or completion to the reasonable satisfaction of the agency is obtained, payments are scheduled as follows:

3.

This contract may be terminated by the state upon 30 days written notice.

(Other conditions for termination may be stated here also.)

4.

Upon completion of this contract, or if terminated earlier, all records, reports, work sheets or any other materials related to this contract shall become the property of the state.

5.

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this agreement and/or legislative appropriation shall be said contractor's obligation and identified under federal tax identification number _____.

6.

The contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the state, provided however, that claims for money due or to become due to the contractor from the state may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the state.

7.

It is hereby agreed that the legislative auditor of the state of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of contractor which relate to this contract.

8.

This contract shall begin on _____ and shall terminate on _____.

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on the day, month and year first written above.

CONTRACTOR

STATE AGENCY

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:183 (April 1981), amended LR 8:596 (November 1982), LR 10:461 (June 1984), LR 11:1074 (November 1985), LR 15:83 (February 1989).

Appendix B. Sample Certification

Sample Certification as required by R.S. 39:1497.

Ms. Susan Smith, Director
Office of Contractual Review
Division of Administration
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

Dear Ms. Smith:

In reference to the attached contract we do certify the following:

1. Either no employee of our agency is both competent and available to perform the services called for by the proposed contract or the services called for are not the type readily susceptible of being performed by persons who are employed by the state on a continuing basis.

2. The services are not available as a product of a prior or existing professional, personal consulting or social service contract.

3. When applicable, the requirements for consulting or social service contracts, as provided for under R.S. 39:1503-1507, have been complied with.

4. The Department of _____ has developed and fully intends to implement a written plan providing for:

a. The assignment of specific agency personnel to a monitoring and liaison function.

b. The periodic review of interim reports or other indicia of performance to date; and

c. The ultimate use of the final product of the service.

Sincerely,

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:184 (April 1981), amended LR 8:596 (November 1982), LR 10:462 (June 1984), LR 11:1075 (November 1985), LR 15:84 (February 1989).

Appendix C. Suggested Checklist for Review of Personal, Professional, Consulting and Social Services Contracts

1. Minimum Contract Content:

Yes No

____ 1. Contains a date upon which the contract is to begin and upon which the contract will terminate.

____ 2. Contains a description of the work to be performed and objectives to be met.

____ 3. Contains an amount and time of payments to be made.

____ 4. Contains a description of reports or other deliverables to be received, when applicable.

____ 5. Contains a date of reports or other deliverables to be received, when applicable.

____ 6. When a contract includes travel and/or other reimbursable expenses, it contains language to effect the following:

a. travel and other reimbursable expenses constitute part of the total maximum payable under the contract; or

b. no more than (a certain sum) of the total maximum amount payable under this contract shall be paid or received as reimbursement for travel or other reimbursable expenses; and

c. travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49 (the state general travel regulation).

____ 7. Contains the responsibility for payment of taxes, when applicable.

____ 8. Contains the circumstances under which the contract can be terminated either with or without cause and contains the remedies for default.

- ____ 9. Contains a statement giving the legislative auditor the authority to audit records of the individual(s) or firm(s).
- ____ 10. Contains an assignability clause.
- ____ 11. Budget Form BA-22 P.S. fully completed and attached to the contract.

2. Determination of Responsibility of Contractor:

Yes No

- ____ 1. Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance.
- ____ 2. Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements).
- ____ 3. Is able to comply with the proposed or required time of delivery or performance schedule.
- ____ 4. Has a satisfactory record of integrity, judgment and performance (contractors who are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall, in the absence of evidence to the contrary or compelling circumstances, be presumed to be unable to fulfill this requirement).
- ____ 5. Is otherwise qualified eligible to receive an award under applicable laws and regulations.
- ____ 6. If a contract for consulting services is for \$50,000 or more, or for social services for \$150,000 or more, the head of the submitting agency has prepared, signed and placed in the contract file a statement of the facts on which a determination of responsibility was based.
- ____ 7. On subcontracting, it has been established that contractor's recent performance history indicates acceptable subcontracting systems; or, major subcontractors have been determined by the head of the submitting agency to satisfy standard.

3. Contract Let via a request for proposals Process:

Contract file attached and this includes:

- ____ Criteria for Selection
- ____ Proposals
- ____ Pertinent Documents
- ____ Selection Memorandum
- ____ Request for Proposals
- ____ Contract

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:184 (April 1981), amended LR 8:596 (November 1982), LR 10:462 (June 1984) LR 11:1075 (November 1985), LR 13:655 (November 1987).

Appendix D. Agency Transmittal Letter

Ms. Susan Smith, Director
Office of Contractual Review
Division of Administration
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

Ms. Smith:

The following contract(s) is/are being submitted to your office this date for review and approval in accordance with R.S. 39:1481 et seq., and the rules and regulations adopted pursuant thereto:

Submitting Agency	Contractor	Amount
-------------------	------------	--------

Upon approval of said contract(s) please return to:

(List Return Address)

Your cooperation in this regard is greatly appreciated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(8).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:185 (April 1981), amended LR 8:597 (November 1982), LR 10:463 (June 1984), LR 11:1076 (November 1985), LR 15:84 (February 1989).

Appendix E. Quarterly Report on Small Purchase Contracts

Ms. Susan Smith, Director
Office of Contractual Review
Division of Administration
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

Ms. Smith:

During the quarter ending _____ the following contracts for \$10,000 or less were approved by the Department of _____.

Contract

Contract Date	Contractor	Purpose or Service Rendered	Amount
---------------	------------	-----------------------------	--------

TOTAL _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:597 (November 1982), amended LR 10:463 (June 1984), LR 11:1076 (November 1985), LR 15:84 (February 1989), LR 17:266 (March 1991).

Appendix F. Performance Evaluation

(Example Only)

Agency Name	_____
Office Name	_____
Agency Contract No.	_____
DOA Contract No.	_____
Contractor	_____

Beginning and Ending Dates for Contract ____ to ____

Description of Services:

Deliverable Products:

(What were final products, if any? Were they delivered on time?
Were they usable?...)

Overall Performance:

(List weak points, strong points. Would you hire this contractor again?)

Signature of Program Official _____

Approved by: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:463 (June 1984), amended LR 11:1076 (November 1985).

Appendix G. Sample Auditor's Opinion for Contract Compliance Audits

We have audited the financial statements of the Provider's Name, for the year ended June 30, 20XX, and have issued our report thereon dated September 21, 20XX. Our examination was made in accordance with generally accepted auditing standards and the *Government Auditing Standards* ("Yellow Book") issued by the U.S. General Accounting Office, and,

accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The management of the Provider's Name, is responsible for the Provider's compliance with laws and regulations. In connection with the audit referred to above, we selected and tested transactions and records from the state contract, number _____.

The purpose of our testing of transactions and records from that contract was to obtain reasonable assurance that the Provider's Name had, in all material respects, administered the contract in compliance with laws and regulations, noncompliance with which we believe could have a material effect on the allowability of contract expenditures.

Our testing of transactions and records disclosed instances of noncompliance with those laws and regulations. All instances of noncompliance that we found are identified in the accompanying schedule of findings and questioned costs.

In our opinion, except for those instances of noncompliance referred to in the preceding paragraph, for the year ended June 30, 20XX, the Provider's Name, administered the state contract number in compliance, in all material respects, with laws and regulations, noncompliance with which we believe could have a material effect on the allowability of contract expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 15:84 (February 1989).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part VII. Property Control

Chapter 1. General Provisions

§101. Definitions

Agency Any state office, department, board, commission, institution, division, officer, or other person, or functional group, heretofore existing or hereafter created, which is authorized to exercise, or that does exercise any function of the government of the state, excluding, however, any governing body or officer of any local government or subdivision of the state or any parochial officer who exercises functions coterminous with the municipality in which he performs those functions.

Agency Property Manager The officer or employee designated by the head of the agency as property manager for the agency.

Charitable Organization Can organization authorized and doing business in the state of Louisiana with its primary purpose being the providing of help and assistance to the needy, by providing direct assistance or indirect assistance through an institution, organization, or fund established to help the needy. Said organization must have and maintain an IRS Section 501 status.

Commissioner The Commissioner of the Division of Administration.

Division The Division of Administration.

Educational Organization Can organization authorized and doing business in the state of Louisiana with its primary purpose being the imparting of knowledge or skill through systematic instruction by the teaching of structured courses at regularly scheduled intervals.

Head of the Agency The individual responsible for the administration and operations of the agency.

Louisiana Property Assistance Agency Director The individual in the Louisiana Property Assistance Section of the Division of Administration who has been designated by the commissioner as the person responsible to the commissioner for the administration of the State Property Control regulations. The responsibility of the director is to develop and organize the agency units necessary to carry out the requirements and functions of R.S. 39:321 et seq.

Property All tangible nonconsumable moveable property owned by an agency with the exception of property specifically exempted by the commissioner. The commissioner hereby designates that state-owned timber should be considered to be moveable and state-owned pecans shall be considered to be nonconsumable for purposes of the Louisiana Property Control Law (R.S. 39:321 et seq.).

1. Timber and pecans are considered moveable and nonconsumable for the purpose of sales and are not to be included in the agency's inventory of moveable property.

Religious Organization Can organization authorized and doing business in the state of Louisiana with its primary purpose pertaining to or teaching a generally accepted and practiced religion within the state.

Surplus Property Any moveable state property which is deemed to be of no further use to an agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326, R.S. 39:331-332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:227 (August 1976), amended LR 7:71 (March 1981), LR 7:265 (May 1981), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 12:92 (February 1986), LR 15:830 (October 1989).

§103. Inventory Classification Codes

A. A listing of items of state property alphabetized by their commonly used names will be developed and maintained by the Louisiana Property Assistance Agency director or his designee. A code number representing each item will be designated. These codes and only these codes are mandated for use in inventorying moveable property by all state agencies subject to the provisions of Title 39 of the Louisiana Revised Statutes.

B. The agency property manager shall use the mandated classification code when completing the classification code field on the Louisiana Property Control Transmittal Form and the classification code section of the BF-11 Form.

C. When an Item has not been Assigned an Inventory Classification Code. The agency property manager must contact the Louisiana Property Assistance Agency for assignment of a new code number before submitting the Louisiana Property Control Transmittal Form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

§105. Agency Numbers

A. The agency number and sub-number are numbers assigned to the agency by the Louisiana property assistance agency director or his designee. This same number is the first five digits on all of the agency's state of Louisiana identification tags. Requests for new or additional agency numbers should be directed to the Louisiana Property Assistance Agency director or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 15:831 (October 1989).

Chapter 3. State Property Inventory

§301. Appointment of Property Managers

A. The head of the agency shall designate one of its officers or employees as agency property manager. In cases where an agency owns a large amount of property situated in more than one location. The Louisiana Property Assistance Agency director or his designee may authorize the appointment of more than one agency property manager within an agency. This authorization shall be in writing and granted only upon the request of the head of the agency. The head of the agency shall notify the commissioner, through the Louisiana Property Assistance Agency director or his designee, in writing, of the appointment of each agency property manager giving his name and domicile. The agency property manager's signature shall be placed on this letter.

B. The head of the agency shall notify the Louisiana Property Assistance Agency director or his designee in writing prior to the date any agency property manager ceases to function in that position. The Louisiana Property Assistance Agency director or his designee shall conduct an examination of the property inventory records under the jurisdiction of the agency property manager. On the basis of the report of this examination and the next accepted certification of moveable property inventory by the agency, the Louisiana Property Assistance Agency director or his designee shall approve the release of the agency property manager from responsibility and liability or shall make a written report of any defects in the records or damage to or shortages of property. In cases of damage to or shortages of property, the commissioner shall take steps as necessary to satisfy the claims of the state, as provided by R.S. 39:330.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:322, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

§303. Faithful Performance of Duty Bond

A. Where the Louisiana Property Assistance Agency director or his designee has approved the appointment of one or more property managers within an agency, each property manager shall be covered by the Faithful Performance of Duty Bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

§305. Responsibility for Property

A. Each agency property manager shall be the custodian of and shall be responsible for all the property within his agency until his release from responsibility is approved by the Louisiana Property Assistance Agency director or his designee.

B. Each agency property manager shall maintain for three years past, the following files:

1. copies of all transmittals submitted for which no record of acceptance has yet been received;
2. annual printout of inventory used for certification (§313.C and §313.G.2);
3. letters of certification of moveable property inventory and subsequent letters of acceptance or rejection (§313.F.11 and §313.G.12);
4. sequentially dated copies of all property acquisition/ change transaction listings received (§317.A);
5. sequential copies of BF-11s submitted, and responses received (§501).

C. When any property is entrusted to any other officer or employee of the agency, the agency property manager shall secure a receipt for such property from the person receiving the property, and in such event, the agency property manager shall be relieved of responsibility for the property but shall continue to maintain accountability for the property. Upon the return of the property to the agency property manager, he shall return the person's receipt or issue acknowledgement of the return of the property and resume responsibility.

D. Whenever an agency property manager has knowledge or reason to believe that any property of the agency is lost, stolen, damaged, or destroyed through vandalism, fire, wind-storm, or other acts of God, he shall immediately notify the head of his agency. The head of the agency shall immediately notify the commissioner, through the Louisiana Property Assistance Agency director or his designee and follow up with a written report. The Louisiana Property Assistance Agency director or his designee shall make an investigation and take necessary action as provided for in R.S. 39:330.

E. The agency property manager and each person to whom property is entrusted and receipted for as provided in these regulations shall be liable for the payment of damages whenever his wrongful or grossly negligent act or omission causes any loss, theft, disappearance, damage to or destruction of property of his agency for which he is responsible as provided herein, and such damages shall be recoverable in a civil suit, therefore, prosecuted on behalf of the state by the attorney general.

F. The head of the agency shall allow the agency property manager(s) the necessary time and provide them with the necessary supplies and assistance for performance of their duties under these regulations, and the head of the agency shall be responsible for seeing that the provisions of these regulations are carried out.

G. The agency property manager shall submit, within the week it becomes known, each idle or surplus item within his agency for disposition request utilizing a State Property Transaction Form BF-11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:322, R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

§307. Items of Property to be Inventoried

A. All items of moveable property having an "original" acquisition cost, when first purchased by the state of Louisiana, of \$1000 or more, all gifts and other property having a fair market value of \$1000 or more, and all weapons, regardless of cost, with the exception of items specifically excluded in §307.E, must be placed on the statewide inventory system. The term "moveable" distinguishes this type of equipment from equipment attached as a permanent part of a building or structure. The term "property" distinguishes this type of equipment from "supplies" with supplies being consumable through normal use in no more than one year's time. All acquisitions of qualified items must be tagged with a uniform state of Louisiana identification tag approved by the commissioner of administration and all pertinent inventory information must be forwarded to the Louisiana Property Assistance Agency director or his designee within 60 calendar days after receipt of these items. In instances when equipment must be installed and/or tested before acceptance by the agency, the calendar days will begin upon official acceptance by the agency.

B. Gifts of moveable property must be given a fair market value as agreed upon between the donor and head of the receiving agency and recorded in the inventory if the fair market value is \$1000 or more.

C. Agencies manufacturing moveable property for use within the agency must determine the estimated cost based on the cost of labor and materials and include such items in the inventory provided that estimated cost is \$1000 or more.

D. Agencies which are eligible to receive federal surplus property must place on inventory all items acquired from Federal Surplus which would ordinarily be classified as moveable property and which have an acquisition cost of \$1000 or more. The acquisition date will be the date of acquisition by the state agency and the acquisition cost will be the actual cost incurred by the state agency.

NOTE: There are federal regulations regarding accountability for federal surplus property. State agencies should contact the Federal Surplus Property Section for information regarding these regulations.

E. Livestock acquired for breeding, dairy, and experimental purposes are classified as property and, with the exception of fowl, and rodents, and any other similar type small mammals, must be recorded in the inventory regardless of the value per animal. Animals acquired for

slaughter need not be placed on inventory. When an agency acquires livestock by birth and determination is made that such animals will be used for breeding, dairy, or experimental purposes, the animals shall be included in the inventory and noted as having been acquired by birth and given an appraised fair market value. At each annual inventory, the value of livestock acquired by birth and used for breeding, dairy, or experimental purposes will be re-appraised by the agency property manager and the acquisition cost will be adjusted on the inventory in accord with current fair market value. When an agency acquires livestock by birth and determination is made that such animals will be slaughtered for food, the animals shall not be included in the inventory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended 8:277 (June 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 15:832 (October 1989), LR 18:1256 (November 1992), LR 28:481 (March 2002).

§309. Marking and Identifying Items of Property on Inventory

A. Each item which meets the definition of items of property to be inventoried (§307) must be identified with an identification tag approved by the commissioner of administration which shall bear a unique identification number.

B. Agencies shall submit their requests for state of Louisiana identification tags directly to Louisiana Property Assistance Agency.

C. The agency property manager shall be responsible for the tagging of property, location, identification of property, and maintenance of property identification tags as prescribed in these regulations.

D. Livestock may be tagged in the ear with a metal tag provided that tag number is set aside. If there is any type of identification mark or tag already on the animal, such as bangs, brucellosis, etc., such identification shall be entered as the tag number provided the number has not been used before.

E. If the item cannot have a state of Louisiana identification number placed on it for physical reasons, the identification number should be set aside and the identification number written on the item with indelible ink (in case of items of cloth), or the number inscribed on the item with a small engraving tool. Authorization must be given in writing by the Louisiana Property Assistance Agency director or his designee for any inventoriable item which does not have a state identification mark due to extenuating circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:323, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:229 (August 1976), amended LR 7:71 (March 1981),

amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:94 (February 1986), LR 15:832 (October 1989).

§311. Inventory of Property

A. The agency property manager shall establish and maintain a property location index which shall be used to keep track of the location of property of the agency. The agency property manager shall keep the property location index for the agency current and shall submit to the Louisiana Property Assistance Agency director or his designee an up-to-date index each time a change or modification is made in the index.

B. The agency property manager shall submit all pertinent inventory information on items acquired by the agency and defined in these regulations as items to be inventoried. The means of submitting the information shall be the Louisiana Property Control Transmittal Form. These forms may be obtained from the Forms Management Section of the Division of Administration. This form shall be sent monthly to the Louisiana Property Assistance Agency director or his designee listing the transactions of the agency for the month. The data submitted on the transmittal form will be forwarded to the Baton Rouge Computer Center by the Louisiana Property Assistance Agency director or his designee, where it will be keypunched into the agency's inventory master file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:324, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:229 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:94 (February 1986), LR 15:832 (October 1989).

§313. Annual Inventory Requirements

A. The agency property manager shall conduct a complete physical inventory of the property owned by the agency each fiscal year and not more than 12 calendar months since the last physical inventory. The agency property manager is responsible for recording the true and actual results of the physical inventory.

B. The agency property manager shall notify the commissioner through the Louisiana Property Assistance Agency director in writing 30 days prior to the date(s) inventory is to begin. Agencies inventorying on a rotation basis shall submit their schedule and shall notify the commission through the Louisiana Property Assistance Agency director of any changes to be made in that schedule. The commissioner, Louisiana Property Assistance director, or their representatives, may supervise or observe all or any part(s) of any inventory.

C. Each agency property manager whose head of the agency elects to use Inventory Procedure I (§313.F) shall utilize the second half of the notification of inventory/request for printout to also request an annual printout of the agency's inventory master file. Additional requests will result in the assessment of a fee to cover costs.

D. The commissioner shall cause periodic observations of inventories and examinations of records to be made and shall cause reports submitted to the Louisiana Property Assistance Agency to be compared periodically with records of the agencies and with the physical property of the agencies for the purpose of testing the completeness and accuracy of inventories, records, and reports.

E. The head of the agency shall determine which of the two methods of inventory shall be used by the agency property manager in the annual physical inventory of the agency's property. The agency property manager shall be responsible for using the method determined by the head of the agency to be the best for the operations of his agency. Any procedure used other than the ones prescribed in these regulations (§313.F and G) must have prior written approval of the Louisiana Property Assistance Agency director or his designee.

F. Inventory Procedure

1. The agency property manager shall, under the direction of the head of the agency, select the date(s) most convenient to the operations of the agency, but not more than 12 months since the last annual physical inventory.

2. The agency property manager shall complete and submit to the Louisiana Property Assistance Agency director or his designee the notification of inventory/request for printout at least 30 days prior to the date(s) inventory is taken.

3. The agency property manager, under direction of the head of the agency, shall designate the personnel who will conduct the inventory by areas indicated in the agency's property location index (§311.A).

4. A copy of the property location index shall be provided to each of the persons participating in the physical inventory. It shall describe the areas and the property location code each person is to inventory.

5. The agency property manager shall provide each person participating in the physical inventory a copy of the state master file listing printout of inventory for the agency covering the area or location to be inventoried.

6. The agency property manager shall instruct the persons participating in the inventory on the method to be used to:

- a. identify and mark on the inventory listing the items located;
- b. mark clearly on the inventory listing the items not located; and
- c. conspicuously mark and report to the agency property manager those items found without a property tag. The agency property manager shall make a determination that the items should or should not be tagged and submitted to the state master file listing of inventory for the agency based on these regulations.

7. The physical inventory shall be taken on the date(s) pre-selected. The agency property manager shall notify

Louisiana Property Assistance Agency director or his designee if, for some unforeseen reason, it is necessary to alter the date(s).

8. The agency property manager shall compile the true results of the physical inventory and shall submit a discrepancy report, (if applicable), to the Louisiana Property Assistance Agency director or his designee with a copy to the legislative auditor, containing all exceptions or discrepancies found in relating physical inventory results with the state master file listing of inventory for the agency.

9. The discrepancy report shall list each of the missing items by agency, tag number, description, location, acquisition date and acquisition cost, along with an explanation of what is believed to have happened to the items not located. The commissioner may cause an investigation to be made upon receipt of a discrepancy report, according to §301.B of these regulations.

10. Items not located during inventory for which there is no explanation available as to their disappearance must be retained on inventory and placed in a suspense location for three years. The location must indicate the year in which the item was first not located, (e.g., "9989"). During these three years, efforts must continue to locate the missing items. If items are relocated, the proper location is to be transmitted for inventory purposes. If, after the third year missing items are still not located, a request to remove from inventory as "not located" may be submitted on a DABF-11 form (§501).

11. The agency property manager shall submit the Certification of Annual Property Inventory to the Louisiana Property Assistance Agency director or his designee with a copy to the legislative auditor, after the physical inventory and the state master file listing of inventory for the agency have been reconciled according to the regulations.

G. Inventory Procedure II

1. The agency property manager shall, under the direction of the head of the agency, select the date(s) most convenient to the operations of the agency, but not more than 12 months since the last annual physical inventory.

2. The agency property manager shall complete and submit to the Louisiana Property Assistance Agency director or his designee the notification of inventory/request for printout of the state master file listing of agency inventory at least 30 days prior to the date(s) inventory is to be taken.

3. The agency property manager, under the direction of the head of the agency shall designate the personnel who will conduct the inventory by areas indicated in the agency's property location index (§311.A).

4. A copy of the property location index shall be provided to each of the persons participating in the physical inventory. It shall describe the areas and the property location code each person is to inventory.

5. The agency property manager shall provide each of the persons participating in the inventory with the Inventory Procedure II form and instruct each concerning its use.

6. The agency property manager shall also instruct those persons participating in the inventory on the method to be used to enter the agency number, tag number, and property location number of each item of property physically located and to conspicuously mark and report to the agency property manager those items found without a property tag. The agency property manager shall make a determination that the item should or should not be tagged and submitted to the state master file listing of inventory based on these regulations.

7. The physical inventory shall be taken on the date(s) selected. The Louisiana Property Assistance Agency director shall be notified by the agency property manager if, for some unforeseen reason, it is necessary to alter the dates.

8. The agency property manager shall reconcile each of the completed true results on the Inventory Procedure II forms with the state master file listing of inventory for the agency.

9. The agency property manager shall submit a discrepancy report (if applicable) to the Louisiana Property Assistance Agency director or his designee with a copy to the legislative auditor, containing all exceptions or discrepancies found in relating physical inventory results with the state master file listing of inventory for the agency.

10. The discrepancy report shall list each of the missing items by agency tag number, description, location, acquisition date, and acquisition cost, along with an explanation of what is believed to have happened to the items not located. The commissioner may cause an investigation to be made upon receipt of a discrepancy report, according to §301.B of these regulations.

11. Items not located during inventory for which there is no explanation available as to their disappearance must be retained on inventory and placed in a suspense location for three years. The location must indicate the year in which the item was first not located, (e.g., "9989"). During these three years, efforts must continue to locate missing items. If items are relocated, the proper location is to be transmitted for inventory purposes. If after the third year missing items are still not located, a request to remove from inventory as "not located" may be submitted on a DABF-11 form (§501).

12. The agency property manager shall submit to the Louisiana Property Assistance Agency director or his designee the Certification of Annual Property Inventory after the physical inventory results and state master file listing of inventory for the agency have been reconciled in accordance with these regulations. The agency property manager shall submit a copy of the certification of annual property inventory to the legislative auditor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:324, R.S. 39:325, R.S. 39:326, R.S. 39:327, R.S. 39:328 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:232 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:96 (February 1986), LR 15:832 (October 1989).

§317. Reports from Louisiana Property Assistance Agency

A. The agency property manager submits the Louisiana Property Control Transmittal Form each month to the Louisiana Property Assistance Agency listing the transactions for the month. At least once each month, the agency property manager will receive from Louisiana Property Assistance Agency a report listing the property acquisitions and changes submitted for the month (if any). Eventually, this report will also include a listing of property dispositions recorded for the agency on the state master file listing for the respective month. This monthly report will show the change in total acquisition value of inventory accomplished for the agency by accepted transactions.

B. Agency Inventory Master File Report. This report contains all the current and updated items on the state master file listing of inventory for an agency and is received upon request from the agency property manager to the Louisiana Property Assistance Agency director. If many transactions have occurred during a period of time, a special request may be submitted for this report other than annually.

C. Inventory Classification Codes. The Louisiana Property Assistance Agency director or his designee will send, as deemed necessary by said director, an updated listing of approved classification codes for items of moveable property to all agency property managers of record. Upon special request from the agency property manager for this listing, a fee sufficient to cover costs will be assessed to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:324, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:234 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:97 (February 1986), LR 15:834 (October 1989).

§319. Agency Reporting Requirements: Summary**A. Reports from Head of Agency**

1. New agency or agency reorganization. Notification of new property manager and domicile, §301.A.

2. Request for more than one agency property manager, §301.A.

3. Notification when agency property manager ceases to function/replaced, §301.B.

4. Notification when property is not located or destroyed, etc., §305.D.

B. Reports from Agency Property Manager

1. Request for agency code numbers, §105.

2. Request for new classification code number, §103.C.

3. Requisitions for state of Louisiana identification tags, §309.B.

4. Request for authorization not to tag an item, §309.E.

5. Copy of current agency property location index, §311.A.

6. Louisiana Property Control Transmittal Form - month, §311.B.

7. Request for Louisiana Property Control Transmittal Forms, §311.B.

8. Thirty days notice prior to annual inventory, §313.B.

9. Request for state master file listing of inventory using Inventory Procedure I, §313.C.

10. Discrepancy report using Inventory Procedure I, §313.F.8 and 9.

11. Certification of annual property inventory using Inventory Procedure I, §313.F.11.

12. Request for state master file listing of inventory using Inventory Procedure II, §313.G.2.

13. Discrepancy report using Inventory Procedure II, §313.G.9 and 10.

14. Certification of annual property inventory using Inventory Procedure II, §313.G.12.

15. Certification of annual property inventory using Inventory Procedure II, §313.G.12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:324, R.S. 39:325, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:235 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:100 (February 1986), LR 15:834 (October 1989).

§321. Acquisition by Transfer from State Surplus Property

A. Surplus property from state agencies is normally retained for the inspection of state agencies at least 45 days before it is sold at public bid or auctioned or scrapped.

B. The purpose for displaying surplus and idle items at the state surplus property warehouse is for transferring those items to an agency where a need exists, thereby reducing expenditures for additional items.

C. The agency property manager or his designated representative shall select the item which the agency needs. A value less than the expected price from public sale of the item shall have been established for each item in the possession of the State Surplus Property Unit of the Louisiana Property Assistance Agency and the receiving agency shall be billed for that value when the item has been received by the receiving agency. Payment to the Louisiana Property Assistance Agency shall be within 30 days.

D. The agency property manager shall use the Louisiana Property Control Transmittal Form to input acquisitions by transfer from State Surplus Property into the state master file listing of agency inventory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:324, R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:235 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:100 (February 1986), LR 15:834 (October 1989).

§323. Responsibility of the Division of Administration Budget Office

A. The Division of Administration Budget Section shall provide the Louisiana Property Assistance Agency with the name and number of each new agency, each abolished agency, and information concerning consolidation or other change of status of any agency. The status change of an agency shall also include those agencies that operate with revolving funds as nonbudget units. This information shall be provided on a timely basis so that the inventory of state-owned property can be kept accountable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:236 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:100 (February 1986), LR 15:834 (October 1989).

§325. Regulations and Orders by the Commissioner

A. The commissioner shall have power and authority to make necessary and reasonable regulations and orders to carry out the provisions of these regulations when it serves the best interest of the state, in addition to specific authorization contained in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:236 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:101 (February 1986), LR 15:835 (October 1989).

Chapter 5. State Property Disposition

§501. Inventory Disposition Authority

A. No property of any agency shall be sold to any person or legal entity or otherwise alienated, or be transferred, assigned or entrusted to any other agency or to any officer or employee of any other agency without the written permission of the commissioner through an approved State Property Transaction Form BF-11.

B. The BF-11 is the request from an agency property manager and is not, in any case, to be considered an approval for any action until a copy is received by the agency property manager with Section II-C Division of Administration Use Only, completed and signed as approved. Entries are to be made in type or print only, except for signatures.

C. An approved State Property Transaction Form BF-11 shall be used as the authority to sell, transfer, scrap, dismantle, loan out or otherwise remove an item from the state master file listing of agency inventory.

D. The disposition of the request is binding upon the agency property manager. If it is different than that requested by the agency property manager, the manager may proceed to dispose of the item in the manner prescribed in Chapter 3 or request that the BF-11 be voided. Disapproval of the BF-11 will require resubmittal of the item in the manner prescribed by the Louisiana Property Assistance director or his designee under the "Remarks" section.

E. The State Property Transaction form BF-11 must be approved by the Louisiana property assistance agency director or his designee prior to any transfer or disposition of state owned property. The BF-11 is the request from an agency property manager and is not, in any case, to be considered an approval for any action until a copy is received by the agency property manager with Section II-Division of Administration Use Only, completed and signed as approved. Entries are to be made in typed or print only, except for signatures. In no case shall property be destroyed prior to this approval. Requests to transfer or dispose of computer equipment must be approved by the director of state purchasing or his designee prior to approval by the Louisiana Property Assistance Agency director. Requests to transfer or dispose of telecommunications equipment must be approved by the director of the Office of Telecommunications or his designee prior to approval by the Louisiana Property Assistance Agency director.

F. No agency property manager or head of the agency shall authorize the transfer of any items of surplus property to the State Surplus Property Unit of the Louisiana Property Assistance Agency without a prior approved BF-11 for each item and a scheduled delivery date from the state surplus property director or state auto delivery/maintenance/operations director or their designees. Items which arrive with unapproved BF-11s at the state surplus property or state auto delivery/maintenance/operations warehouses for disposition will be returned to the shipping agency for proper compliance to these regulations.

G. The agency property manager must either see to the delivery to the designated state surplus property warehouse of items approved for transfer to surplus or contact the state surplus property director or state auto delivery/maintenance/operations director to schedule pickup of these items. In either case, the property manager must clearly mark each item with the BF-11 number by which the item was approved for transfer. Items scheduled for pickup must be located in an easily accessible area.

H. Whenever an agency property manager has knowledge or reason to believe that any property of the agency is lost, stolen, damaged, or destroyed through vandalism, fire, windstorm, or other acts of God, he shall immediately notify the head of the agency. The head of the agency shall immediately notify the commissioner, through the Louisiana Property Assistance Agency director or his designee, and follow up with a written report. The Louisiana Property Assistance Agency director or his designee shall make an investigation and take necessary action as provided for in R.S. 39:330.

I. A fee may be assessed to the receiving agency in accord with established policies approved by the commissioner governing the operations of the Louisiana Property Assistance Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200.C, R.S. 39:326, R.S. 39:330, R.S. 39:330.1-2 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:236 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:101 (February 1986).

**§503. State Property Transaction Form DABF-11
(Revised 4-85)**

A. The BF-11 is the means of an agency receiving written approval for the disposition of any and all items of state property from the agency. Use only the latest revision of the form BF-11.

B. The BF-11 is the request from an agency property manager and is not, in any case, to be considered an approval for any action until a copy is received by the agency property manager with Section II-Division of Administration Use Only, completed and signed as approved. Entries are to be made in type or print only, except for signatures.

C. The agency property manager shall enter the originating date of the request.

D. Section I-Report and Evaluation

1. The agency property manager shall complete (check) one of the boxes indicating his recommendation for disposal of the item.

2. The agency property manager shall enter the complete title and mailing address of the reporting agency and the agency control number consisting of the five digit agency number, a fiscal year number (e.g., "00, 01, 02, 03, 04, 05, 06, 07, 08, or 09"), and the proper sequence number of the respective BF-11 for that agency (the first BF-11 for each fiscal year will be "00001," the second will be "00002," etc.).

3. The common name of the article, the make and model, and the manufacturer (if known) shall be completed. The quantity of items for which disposition is requested on this BF-11 must be noted. See §501.D concerning number of items allowed per BF-11. When preparing one BF-11, listing multiple items for disposition, the agency property manager must prepare an attachment indicating sub-numbers for each item listed (exhibit 8). The first item listed should be shown with the BF-11 number only (e.g., BF-11 Number 189171); the second item should be shown with the BF-11 number plus "01" (e.g., BF-11 Number 18917101); the third item should be shown with the BF-11 number plus "02" (e.g., BF-11 Number 18917102), etc.

4. The agency property manager shall enclose with the BF-11 request for transferring vehicles and trailers to the Louisiana Property Assistance Agency director or his designee the following items.

a. Motor vehicle condition report DA121, revised 6-76 (exhibit 9).

b. Certificate of title (endorsed and notarized).

NOTE: Do not enter the receiver of title. The registration certificate must be delivered with the vehicle when transferred.

5. The agency property manager shall enter additional remarks giving justification for requests to scrap, dismantle, make an inventory adjustment, or remove as not located, and identifying the condition of items to be transferred to surplus or sold "as is, where is." Pictures must be attached for sale "as is, where is" items, a police report for stolen items, and a memorandum of justification for trade-ins.

6. The five-digit agency number and tag number must be entered in the required section. If the item(s) to be disposed of is (are) not active on agency inventory, this must be indicated in the remarks section of the BF-11 and an appropriate classification code must be listed for each item.

7. The following headings on the information form shall be completed for items active on agency inventory utilizing the state master file listing of agency inventory:

- a. serial number (up to 22 digits);
- b. property location;
- c. acquisition date; and
- d. acquisition cost.

8. The description of the physical storage location of the item shall be explicit. The contact person and his telephone number for pickup of transfer items shall be entered by the agency property manager.

9. The section entitled "Reimbursement Request" must be checked if applicable. Note: Specific documentation may be required by Louisiana Property Assistance Agency director or his designee showing the specific item was purchased with participating federal funds and the percentage, or with other funds requiring reimbursement, prior to release of the reimbursement to the agency. Normally, state agencies are not eligible for any reimbursement for surplus property proceeds.

10. The designated section must be signed by the agency property manager with his name and title typed or printed.

E. Section II-Division of Administration Use Only

1. The disposition stated in this section is binding upon the agency property manager. If it is different than that requested by the agency property manager, the manager may proceed to dispose of the item in the manner prescribed in Chapter 3 or request that the BF-11 be voided. Disapproval of the BF-11 will require resubmittal of the item in the manner prescribed by the Louisiana Property Assistance Agency director or his designee under the "Remarks" section.

2. Approval of a BF-11 form will constitute grounds for deactivation of the listed property item(s) on the state master listing of the agency's inventory. The item will be deactivated on-line by Louisiana Property Assistance

Agency personnel. However, if property items designated for transfer to surplus are later not available for such transfer or if the agency property manager requests and approval is given for voiding a BF-11, the affected property items will be reactivated on the agency inventory.

F. Section III. This section is completed when the item is received at the State Surplus Property warehouse. The agency property manager must keep on file all BF-11s completed in this section as evidence that responsibility for the items listed has been transferred to State Surplus Property.

G. Section IV-Receiving Agency

1. For all BF-11s with disposition of interagency transfer, the agency property manager for the reporting agency must enter the name, full address (attention: property manager) and agency property control number of the receiving agency in Section IV of the BF-11. Once the BF-11 has been approved and the receiving agency property manager has acknowledged receipt of the item, Louisiana Property Assistance Agency personnel will remit a copy of the receipted BF-11 to the reporting agency property manager to be kept on file as evidence of transfer of responsibility for the item. A fee may be assessed to the receiving agency in accord with established policies approved by the commissioner governing the operations of the Louisiana Property Assistance Agency.

2. For every BF-11 with disposition of transfer to surplus or sale "as is, where is," this section is completed by the State Surplus Property Unit of the Louisiana Property Assistance Agency when the item is transferred to another agency. The receipt of the receiving agency is completed by the agency representative responsible for pickup of the item where he physically receives the item on behalf of the receiving agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:237 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:101 (February 1986).

§505. Disposition of State Moveable Property

A. These regulations of the commissioner shall govern the condemnation and disposition of state property when it is determined that certain items of property are of no use to the agency or to the state.

B. Property transferred to the Louisiana Property Assistance Agency of the Division of Administration may be assigned for use in other agencies in accord with established policies of the Division of Administration when the commissioner deems it to be in the best interest of the state. A fee may be assessed to the receiving agency in accord with established policies approved by the commissioner governing the operations of the Louisiana Property Assistance Agency. Said property may, in accord with Division of Administration policies and R.S. 39:330(b), be

sold to political subdivisions, municipalities, or religious, charitable, or educational organizations when the commissioner deems it to be in the best interest of the state. To purchase such property, said subdivisions, municipalities and/or organizations must:

1.a. follow agency-listing procedures established by the Louisiana Property Assistance Agency director with the approval of the commissioner;

b. place purchased items in use within the subdivision, municipality, and/or organization within 90 days of purchase; and

c. maintain purchased items in use for subdivision, municipality, and/or organizational purposes for at least 18 months from date of purchase.

2. Exceptions to this regulation in individual instances require written approval from the Louisiana Property Assistance Agency director or his designee. Purchasing subdivisions, municipalities, and/or organizations shall make available to Louisiana property assistance auditors upon request all necessary records and documentation supporting compliance with these requirements.

C. Property owned by the state for more than six months and of no use to the state or agencies may be considered for disposition to the public.

D. The Louisiana Property Assistance Agency director or his designee may sell property "as is, where is" when it is determined to be in the best economical interest of the state.

E. The Louisiana Property Assistance Agency director shall deposit the proceeds from transfer or sale of property at public bid to the Louisiana Property Assistance Agency revolving fund.

1. Originating Purchase from any Percentage of Participating Federal Funds. For equipment with a unit acquisition cost of less than \$1,000, the Louisiana Property Assistance Agency will retain 20 percent of the proceeds received from sale of the item and the percentage of the remainder which corresponds to the percentage of federal funding in acquisition of the item will be refunded to the agency if the program is still active. There will be no refund if the program has been discontinued. For equipment with a unit acquisition cost of \$1,000, or more, \$100, or 10 percent of the total sales, whichever is greater, will be retained by the Louisiana Property Assistance Agency for handling expense and the remainder will be refunded to the agency. Unless contractual or legal disposition requirements specify otherwise, agencies will be reimbursed 80 percent of the proceeds received by the Louisiana Property Assistance Agency for any item originally purchased by other grants, funds, etc., which require reimbursement.

NOTE: The agency's use of the reimbursed percentage of federal funds must be documented for the legislative auditor.

2. Originating Purchase from State Revolving Fund. The agency transferring the item shall be reimbursed at least 80 percent of the proceeds received by Louisiana Property Assistance Agency for the item.

3. Sale of Farm Produce. The cost to the agency for bid services rendered by Louisiana Property Assistance Agency shall be up to five percent of the proceeds of the sale.

4. Sale of State-Owned Timber. The cost to the agency for bid services shall be up to five percent of the proceeds of the sale.

5. As an exception to the general state property disposition regulations, state agencies may sell their livestock at any authorized public auction or sale. A BF-11, any documentation pertaining to the sale, and a check for the full amount of the sale proceeds, should be sent to the Louisiana Property Assistance Agency immediately after the sale. The livestock will then be removed from the state master listing of inventory for the agency if such is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:239 (August 1976), amended LR 7:71 (March 1981), LR 7:265 (May 1981), LR 9:412 (June 1983), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:102 (February, 1986), LR 15:835 (October 1989).

§507. Regulations and Orders by the Commissioner

A. The commissioner shall have power and authority to make necessary and reasonable regulations and orders to carry out the provisions of these regulations when it serves the best interest of the state, in addition to specific authorizations contained in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:240 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 15:836 (October 1989).

Chapter 7. Agencies with Integrated Inventory Control Systems and Miscellaneous Exceptions

§701. Qualifications

A. The commissioner shall have the authority to allow certain agencies which have utilized their own data processing facilities for their inventory control systems and those agencies which initiate data processing facilities for this purpose to maintain and use those systems provided those inventory systems can meet the requirements of R.S. 39:321-332 and these State Property Control regulations.

B. A prerequisite to receive written permission from the commissioner through the Louisiana Property Control Assistance Agency director is that the existing system must be integrated into other systems within the agency through data processing interfaces and not be a "stand alone" system. "Stand alone" inventory systems shall be converted to the state Property Control System. The Office of Information Services of the Division of Administration shall make that determination through an examination of those agencies

which apply to the commissioner through the Louisiana Property Assistance Agency director for permission to continue to use their own data processing facilities for agency inventory control.

C. Those agencies which receive written permission to utilize their own data processing facilities for inventory control are excluded from utilizing the Louisiana Property Control Transmittal Form.

D. These regulations must be met in full unless the head of the agency applies to the commissioner through the Louisiana Property Assistance Agency Director for a specific exclusion from a requirement and receives written permission from the commissioner when he deems it to be in the best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:240 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 15:836 (October 1989).

§703. Agency Inventory Master File Interface

A. Those agencies which receive written permission from the commissioner through the Louisiana Property Assistance Agency director to utilize their own data processing facilities for inventory control shall coordinate through the Office of Information Services of the Division of Administration and complete the following conversion programs for transferring the agency master file information.

B. If the agency has not previously listed inventory on the Louisiana Property Assistance System, the agency shall transfer to the Division of Administration, Louisiana Property Assistance Agency Inventory Control System at the Baton Rouge Computer Center the agency's inventory master file with the same data and field length as required when using the Louisiana Property Control Transmittal Form through a computer tape-to-tape conversion. If the agency has previously listed inventory on the Louisiana Property Assistance System, Louisiana Property Assistance Agency will provide the agency with a computer tape of inventory to be used in establishing the agency system.

C. Each subsequent month, the agency shall submit a like formatted computer tape showing all acquisition and change transactions for the preceding month involving the agency inventory master file. Each acquisition/change transaction tape must be submitted in the format approved by Louisiana Property Assistance Agency.

D. Disposition and removal of items from inventory may only be accomplished by submission and approval of a BF-11 (§501).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 12:677 (October 1986), LR 15:836 (October 1989).

§705. Inventory Classification Code System

A. All state agencies shall utilize the inventory classification code system established by the Louisiana Property Assistance Agency director or his designee for the coded numbers which identify each item of inventory. Any agencies currently not utilizing the Louisiana Property Assistance Agency inventory classification code system shall convert the items on the agency inventory master file to said classification code system. This conversion shall be coordinated by the Office of Information Services between the agency and the Louisiana Property Assistance Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 15:836 (October 1989).

§707. Reporting Requirements

A. The head of the agency and the agency property manager(s) shall comply with the reporting requirements of these regulations with the exception of §311.B, §319.B.6.-7, which relate to the use of the Louisiana Property Control Transmittal Form. This form will not be used when an agency has received permission in writing to utilize their own data processing facilities. Computer tapes will be submitted on a monthly basis instead of the transmittal form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:104 (February 1986), LR 15:836 (October 1989).

§709. Nonexclusion from State Property Control Regulations

A. These regulations, effective February 20, 1986, Chapters 1-7, (§§101-709) supersede all previous regulations and exceptional permissions, both written and verbal. Any

exclusion request shall be submitted to the commissioner, through the Louisiana Property Assistance Agency director, for consideration. Any exclusion from these regulations must be approved in writing by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S.321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:104 (February 1986), LR 15:837 (October 1989).

Chapter 9. Noncompliance**§901. Penalties**

A. The commissioner shall have power and authority to make necessary and reasonable regulations and orders to carry out the provisions of these regulations when it serves the best interest of the state. The commissioner shall have the authority to invoke any and all of the following actions when agencies are found to be in noncompliance with these regulations:

1. call in the good faith performance bonds of the respective property managers;
2. take action to restrict or require acquisition of movable property only on approval of the commissioner until compliance with the movable property regulation is completed;
3. revoke or restrict purchasing authority for movable property;
4. contract, at the expense of the agency in noncompliance, the resources necessary to resolve the compliance problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 12:103 (February 1986), amended LR 15:836 (October 1989), LR 17:266 (March 1991).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part IX. Federal Property Assistance Agency

Chapter 1. Legal Authority

§101. Executive Order

A. Executive Order MJF 97-19, dated January 1, 1997, authorizes the name of the program to be the Louisiana Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration in the Executive Branch of the Office of the Governor. This executive order authorizes the director of the agency, acting through the program manager, to possess all power and authority necessary to exercise and perform all the functions, duties and responsibilities cited in the plan of operation, so as to comply with all applicable state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:30 (January 1998).

§105. Appropriations Bill

A. The ancillary budget identifies the revolving fund of the program which is used as the means of financing for the program's operations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:30 (January 1998).

Chapter 3. Designation of State Agency

§301. Agency Responsible

A. The Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration, which is in the Executive Branch of the Office of the Governor, is designated as the agency responsible for administering the federal surplus property program in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:30 (January 1998).

§303. Organization of the Program

A. The program is under the supervision of the program manager, who directs the implementation of this plan of operation, which fully outlines the provisions of P.L. 94-519. This is a permanent plan of operation that is in compliance with 41 CFR 101-44 and P.L. 94-519. The program manager, with a staff of 16 employees, directs the operation of the program through inspection, selection, acquisition, transportation, storage, and issuance of federal surplus property to eligible donees in the state of Louisiana. The main segments of the organization are:

1. program management;
2. administration;
3. procurement, compliance, and utilization;
4. operations and property distribution.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), amended LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:31 (January 1998).

§305. Facilities

A. The program offices are located at 1635 Foss Drive, Baton Rouge, Louisiana. The central facilities are at this location, which includes approximately 29,000 square feet of covered space, 200,000 square feet of outside storage space, and 900 square feet of parking. This facility is owned by the state of Louisiana and is rent-free.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:412 (October 1977), repromulgated LR 9:840 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:31 (January 1998).

Chapter 5. Inventory Control and Accounting System

§501. Inventory Control

A. Scope of Accountability System. The program shall maintain accurate accountability records of all donable property approved for transfer to the program and donable property received, warehoused, distributed, and disposed of by the program. Accountability records of all passenger motor vehicles and single items having an acquisition cost of \$5,000 or more, on which restrictions are imposed, shall be maintained in order to identify the items.

B. Checking Property into Program Custody

1. All property received shall be checked in promptly, as soon as full identification can be completed.

2. The approved copy of the Standard Form 123 (SF-123) is used as the basis for checking property into the program facility. The inventory adjustment voucher shall be used for property received without the SF-123. To supplement these, available shipping documents, invoices, trucking bills of lading, donee reports, etc. will be used.

3. Exceptions or differences in a line item on the SF-123 are noted when the item(s) are received to reflect any increase or decrease as it affects the line item. This action will be documented to report any change in the amount initially allocated on a report of overages/shortages. This action is subsequently posted to the property receipts register.

4. The SF-123 is considered as an order; therefore, any differences, over or short, are recorded on the Shortage/Overage Report Form. Copies of this form in every case are forwarded to the General Services Administration (GSA) regional office involved. A copy is also mailed to the holding agency when the record of receipt shows a variance from the quantities and items shown on shipping documents.

5. In accordance with the requirements of Federal Property Management Regulations (FPMR) 101-44.115 concerning overages, when the estimated fair value or acquisition cost of a line item of property is over \$500, it will be listed on the SF-123 and sent to the GSA regional office for approval.

C. All issues of property to eligible donees are recorded on a distribution document (invoice) with provisions made for recording the name of the item, state serial number, quantity, government acquisition cost, and service charges.

D. Periodic Verification of Property on Hand

1. A financial verification of the property on hand at the end of each month at the state agency is made and reconciled with the books, in accordance with accepted accounting practices.

2. A physical inventory will be completed each fiscal year. This physical inventory will be compared with a unit-generated computer printout as each segment is completed. All differences will be properly noted, recorded, and will become a part of the regular accounting system. Any adjustments on items shall be reported to the manager for approval and any necessary follow-up and corrective action.

E. Tracing Property from Receiving Document to Issue Document

1. Each line item on the receiving report (Form 123) must be entered on the computer including noun nomenclature, federal supply classification code (group code), government acquisition cost, condition code, receipt date, and quantity received. Each receiving document is recorded in a register, and a file folder is maintained for each receiving document.

2. Each warehouse write-up document is numbered and filed numerically by month.

3. Every issue document (invoice) that is generated from the warehouse write-up documents must be entered on the computer so that the computer reports accurately reflect the federal property inventory. Each issue document is filed numerically by month. These documents are also filed by donee organization and are grouped by parish.

F. Means of Determining Quantity of Various Types of Property Donated to Individual Donees

1. A file folder is maintained in the program offices for each eligible donee. This folder will hold a copy of each distribution document (invoice), monthly status of account, correspondence, reports, and other items involving transactions with the donee.

2. A separate compliance record is maintained for each donee on items with a unit acquisition cost of \$5,000 or more and on all passenger motor vehicles on which restrictions are imposed.

3. A summary of distribution to record the acquisition cost of property transferred to each eligible unit is prepared monthly.

G. Disposal of Property of No Value to Program. Property will be reported to GSA for transfer to another state agency or disposed of by public sale, dumping, or abandonment, as authorized. Appropriate records are maintained to cover such disposals, in accordance with the procedures and requirements of FPMR 101-44.205.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:412 (October 1977), amended LR 9:840 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:31 (January 1998).

§503. Financial Accounting

A. Scope. A double entry financial accounting system provides a full accounting of all property requested, screened, received, issued, and disposed of, plus income, expenses, and status of the revolving fund. The system includes:

1. distribution documents (invoices);
2. accounts payable;
3. accounts receivable;
4. sale register (issues);
5. property receipts register;
6. deposit slips and vouchers;
7. cost center responsibility report (budget control);
8. general ledger;
9. payment of bills and expenses;

10. monthly financial report;
11. in-use inventory;
12. State Property Inventory Control Report;
13. record of disposals;
14. statistical analysis reports.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), amended LR 9:840 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:32 (January 1998).

Chapter 7. Return of Donated Property

§701. Return of Property by Donee

A. When a determination has been made that property has not been put in use by a donee within one year from the date of receipt of the property, or when the donee has not used the property for one year thereafter under the terms and conditions of the Application, Certification, and Agreement Form signed by the chief executive officer or other authorized representative of the donee as a condition of eligibility (and repeated on the reverse side of each distribution document), the donee, if property is still usable, as determined by the program office, must either:

1. return the property, at its own expense, to the program warehouse;
2. transfer the property to another eligible donee within the state or to a federal agency, as directed by the program manager;
3. make such other disposal of the property, as the program manager may direct.

B. The program manager will periodically emphasize this requirement when corresponding and meeting with donees and when surveying and auditing utilization of donated property at donee facilities.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:840 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:32 (January 1998).

Chapter 9. Financing and Service Charges

§901. Financing

A. The state legislature approves the budget for the program, and an appropriation bill is signed into law by the governor each fiscal year which allows the program to operate a revolving fund. This allows the program to receive service charges from donees in order to defray the costs of the operating within the approved budget.

B. Funds expended or advanced, or commitments made or incurred shall be paid or provided for from the receipts of the program's revolving fund prior to the close of the fiscal year.

C. The revolving fund is established with the state treasurer to maintain the revenues from service charges which cover the costs of administering and operating this program. Monies deposited to the revolving fund must be used only for such purposes and for the short- and long-term benefit of the donees.

D. All income from service charges and other monies received by the program are deposited to the revolving fund. Payments covering all expenses are made by state check. All remittances must be in the form of checks drawn on the account of the donee and made payable to the program. All expenditures made from the revolving fund will be in accordance with federal regulations as per FPMR 101-44.202(c)(5).

E. Any evident surplus in the revolving fund shall be passed directly to the donees' benefit through reduction in the service charges for the current inventory during the fiscal year. Surpluses during the fiscal year may be utilized by the manager to acquire additional distribution facilities, improve existing facilities, or other capital expenditures deemed by the manager to be in the best overall interests of the donees. In the event the program is to be terminated, service charges will be reduced to the extent that any surplus will be passed on to the donees on the usable inventory.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:841 (December 1983), amended by Office of the Governor, Division of Administration, the Property Assistance Agency, LR 24:32 (January 1998).

§903. Service Charges

A. Service charges are established for items at the time of receipt of the property and are designed to effect full recovery of the cost of operations of the program. The service charges shall be clearly marked on each item or lot. The service charges are based on the prorated expenses incurred annually by the program including, but not limited to, the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing, storage, compliance, insurance, printing, supplies, and travel.

B. The service charges assessed each item shall be reasonable and fair in relation to the cost incurred and the services performed by the program. Emphasis will be placed on keeping the service charges to a minimum, but at the same time, providing the necessary service. Other factors considered in determining service charges are original acquisition cost, present value, screening cost, quantity, condition, desirability of property, transportation, loading and unloading cost, packing and crating, administrative cost, utilization and compliance, and delivery to donee when required.

C. The service and handling charge will be determined by applying zero to 50 percent of original acquisition cost or fair market value, taking into consideration factors listed in §903.B, D, and E and §907.C. The total of the service charges for all property donated by the program during any given fiscal year shall not exceed 15 percent of the original government acquisition cost of the property.

D. Special or extraordinary costs may be added to the service charges as follows.

1. Rehabilitated Property. Direct costs for rehabilitating property will be added to the service charge.

2. Overseas Property. Additional direct costs for returning the property may be added.

3. Long-Haul Property. Charges for major items with unusual costs may be added. Any such costs which are anticipated will be discussed with the donee prior to shipment.

4. Special Handling. An additional charge may be made for dismantling, packing, crating, shipping, delivery, and other extraordinary handling charges.

5. Screening. Extraordinary costs incurred in screening property may be added.

6. Homeless. Property provided to homeless activities (P.L. 110-77, Stewart B. McKinney Homeless Assistance Act enacted July 22, 1987) will be provided at a nominal fee.

E. The manager has the authority to reduce the service charges due to property condition. The manager may request, from the GSA regional office, a reduction on high-acquisition cost items when in poor condition, or when the item is to be used for secondary purposes.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:841 (December 1983), amended LR 16:690 (August 1990), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

§905. Minimal Charges

A. Service charges for items requested by a donee and which are shipped directly from the federal holding agency to the donee shall be based on a percentage of the acquisition cost of the item, which is derived from the percentage of the cost for each of the functions performed by the program.

B. Transportation costs, if transportation is provided by the program, shall be based on the cost per mile, cost of loading, unloading, crating, and packing. Transportation arranged by the donee shall be paid direct by the donee and must be provided in a timely manner in order not to lose the priority for the item.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), amended LR 9:841 (December

1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

§907. Special Donations

A. In cases involving major items of property or otherwise where unusual expenses may be incurred, the program may negotiate the service charge with the donee.

B. The State Agency Quarterly Donation Report of Surplus Personal Property will be used to measure performance.

C. The manager has the authority to reduce the service charge when he believes that an element of the charge is not applicable, or when he deems it to be in the best interests of the program.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), repromulgated LR 9:841 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

Chapter 11. Terms and Conditions on Donable Property

§1101. Restrictions on Property

A. The program will require each eligible donee, as a condition of eligibility, to file with the program office an Application, Certification and Agreement form outlining the certifications, and agreements, and the terms, conditions, reservations, and restrictions under which all federal surplus personal property will be donated. Each form must be signed by the chief executive officer of the donee agreeing to these requirements prior to the donation of any surplus property. The donee shall be defined as the unit which is authorized to pay for the item(s) and which otherwise meets the qualification requirements. The certifications and agreements, and the terms, conditions, and reservations and restrictions, will be printed on the reverse side of each program distribution document (invoice), which shall be signed by the chief executive officer of the donee or his certified designee, whose name must be provided to the program office, in writing, over the signature of the chief executive officer of the donee.

B. The following periods of restriction are established by the program on all items of property with a unit acquisition cost of \$5,000 or more, and on all passenger motor vehicles.

1. Passenger motor vehicles **C**18 months from the date the property is placed in use.

2. Items with a unit acquisition cost of \$5,000 to \$10,000 **C**18 months from the date the property is placed in use.

3. Items with a unit acquisition cost of over \$10,000 **C**30 months from the date the property is placed in use.

4. Aircraft (except combat type) and vessels (50 feet or more in length) with a unit acquisition cost of \$5,000 or more 60 months from the date the property is placed in use. Such donations shall be subject to the requirements of a conditional transfer document.

5. Aircraft (combat type) Restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a conditional transfer document.

C. For good and sufficient reasons, such as the condition of the property, or the proposed use (secondary utilization, cannibalization, etc.), the program office may reduce the period of restriction on items of property falling within the provisions of §1101.B.3 and 4, at the time of donation, but no less than for a period of 18 months from the date the property is placed in use.

D. The program office, at its discretion, may impose such terms, conditions, reservations, and restrictions as it deems reasonable, on the use of donable property other than items with a unit acquisition cost of \$5,000 or more, and passenger motor vehicles.

E. The program office has imposed the following terms and conditions which shall be applicable during the period of compliance:

1. each passenger motor vehicle and any motorized heavy equipment (such as bulldozers, tractors, etc.) shall bear the official decal of the donee or the name of the donee in letters no less than 3 inches in height on each side of the item during the period of compliance;

2. donees which are defined as state agencies shall maintain those items which are movable, nonconsumable, and have a fair market value of \$250 or more and have been obtained from the federal surplus property program on the inventory control system defined in the State Property Control regulations of August 20, 1976;

3. donees which are not defined as state agencies shall maintain those items which are movable, nonconsumable, and have a fair market value of \$250 or more and have been obtained from the federal surplus property program on an inventory control system during the period of compliance. That inventory control system shall show the location of the items.

F. Failure to comply with the provisions of §1101.E will cause the program office to impose the following penalties on the donee:

1. return of the item to the program at the donee's expense;

2. a fine of 1 percent per day of the acquisition cost of the item shall be imposed on the donee for each day the restriction is not met;

3. the donee shall be declared ineligible as a participant in the program for a period of 90 days;

4. the manager may set aside the condition and penalties in §1101.E and F.1-3, in writing, for good and sufficient reasons.

G. Whenever information is obtained by the manager of the program from utilization reports, periodic surveys, or from other sources which indicate that a donee has failed to place property into use for the benefit acquired or within the prescribed period of time, or that there has been a loss or theft, or related acquisition, use, or disposal of property during the compliance period, the manager shall immediately initiate the appropriate investigative and compliance action as prescribed in §1903.D. When an investigation proves failure by the donee to comply with this Chapter, the manager shall impose the penalties listed in §1101.F.1-3.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), amended LR 9:841 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

§1103. Restrictions on Donations

A. The program may amend, modify, or grant release of any term, condition, reservation, or restriction it has imposed on donated items of personal property, in accordance with the standards prescribed in this plan, provided that the conditions pertinent to each situation have been affirmatively demonstrated to the satisfaction of the program manager and made a matter of public record.

B. The program office will impose on the donation of any surplus item of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.

C. The program office will impose on all donees the statutory requirement that all items donated must be placed in use within one year of donation and be used for the purpose for which it was donated for one year after being placed in use or otherwise returned to the program while the property is still usable.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:34 (January 1998).

Chapter 13. Nonutilized Donable Property

§1301. Methods of Disposal

A. All property in the possession of the program office which cannot be utilized by eligible donees shall be reported to GSA for disposal authorization, in accordance with FPMR 101-44.205. In accordance with this regulation, the program office shall either:

1. transfer the property to the program of another state or to a federal agency;
2. sell the property by public sale;
3. abandon or destroy the property.

B. In the event of disposal by transfer to an agency in another state or by public sale, the program office may seek such reimbursement as is authorized in accordance with FPMR 101-44.205.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:34 (January 1998).

Chapter 15. Fair and Equitable Distribution

§1501. Methods for Distribution and Utilization

A. General Policy. The program office shall arrange for a fair and equitable offering of available surplus property to the eligible units in the state, based upon their relative needs and resources and their ability to utilize the property in their program.

B. Determinations

1. The following criteria shall be used by the manager of the program in determining the relative needs and resources of donees and their ability to utilize the property:

a. the population of the parish of the donee, based on the current Preliminary Population Estimates for Louisiana by Parish. Source: Louisiana Tech University, official depository of U.S. Bureau of Census materials;

b. the per capita income of the parish of the donee. Source: current Bureau of Economic Analysis, Department of Commerce;

c. the percent of the average employed persons to the population of the parish of the donee. Source: Research and Statistics Unit, Department of Employment Security, current; and Louisiana Tech University, current Preliminary Population Estimates by Parish;

d. the daily average school attendance of the parish of the donee. Source: Louisiana Department of Education, current;

e. the number of hospital beds (short-term general hospitals) of the parish of the donee. Source: current Louisiana Hospitals Statistics of the State Office of Comprehensive Health Planning;

f. details on the scope of the donees' program, financial information, and specific items of property needed.

2. Other factors to be taken into consideration will include:

a. critical need on the part of the applicant due to a state of emergency or emergency, such as fire, flood, hurricane, etc.;

b. quantity and/or value of surplus property received by donee to date, and specific major items of equipment previously received;

c. interest and expressions of need on the part of the donee in the property available;

d. ability and willingness demonstrated by donee to inspect and select property, timeliness in removing property from warehouse, or a request for direct shipment from a federal holding agency;

e. financial ability of donee to acquire property, repair or renovate property (if necessary), and maintain the property.

C. Applications for Surplus Property Not in Inventory

1. A request for a specific item of property may be submitted by the chief executive officer, or his designee, of the donee to the manager of the program on a Request for Property form when the specific item is not in the inventory of the program.

2. The Request for Property form shall be the only means of requesting property by the donee, in order that the manager may use the same information in determining priority on competing requests for items. Priority ratings by the manager shall be made, utilizing the formula based on the criteria shown in §1501.D, and shall be based on the information submitted by the donee on the Request for Property form.

3. Falsification of any information on the Request for Property form submitted by the donee shall cause the donee's eligibility to participate in the program to be revoked for a period of 12 months.

D. Formula for Determining the Property Request Priorities

1. The program office shall use this formula for determining which donee shall receive an item for which there are competing requests. The information submitted by the donee on the Request for Property form shall be the main basis for the rating. The manager of the program shall have the authority to modify the rating formula on a quarterly basis and to delete and/or add categories, as are necessary to maintain fair and equitable distribution among the donees. The higher the donee rating, the higher the priority the donee will have for the item utilizing the formula.

2. Population by parish of the donee:

Under 10,000	10	50,001-100,000	5
10,001-20,000	9	100,001-150,000	4
20,001-30,000	8	150,001-200,000	3
30,001-40,000	7	Over 200,001	2
40,001-50,000	6		

3. Per capita income by parish of the donee:

Under \$3,000	10	\$3,901-\$4,100	5
\$3,001-\$3,300	9	\$4,101-\$4,300	4
\$3,301-\$3,500	8	\$4,301-\$4,500	3
\$3,501-\$3,700	7	Over \$4,501	2
\$3,701-\$3,900	6		

4. Percentage of average employed persons to the population by parish of the donee:

Less than 10%	10	30%-35%	5
10%-15%	9	35%-40%	4
15%-20%	8	40%-45%	3
20%-25%	7	Over 45%	2
25%-30%	6		

5. Daily school attendance by parish of the donee:

Under 5,000	10	40,000-60,000	5
5,001-10,000	9	60,001-80,000	4
10,001-20,000	8	80,001-100,000	3
20,001-30,000	7	over 100,000	2
30,001-40,000	8		

6. Number of hospital beds by parish of the donee:

0-25	5
26-50	4
51-200	3
201-500	2
over 500	1

7. State of emergency: 10

8. Emergency: 20

9. Unencumbered funds available to acquire property:
Yes-10; No-0.10. Unencumbered funds available to repair, renovate
(if necessary), and maintain property: Yes-10; No-0.11. Ability and willingness demonstrated by donee to
inspect and select property, and timeliness in removing
property from warehouse: 0-10.12. Scope of donee's program and utilization of the
item for the benefit of the residents: 0-10.13. Interest and expressions of need on the part of the
donee in the item: 0-10.14. Direct pickup request from the federal holding
agency by the donee: 5.

15. Value of surplus property received by donee to date.

Federal Acquisition Cost	Rating
0-\$10,000	10
\$10,001-\$ 25,000	8
\$25,001-\$ 50,000	6
\$50,001-\$100,000	4

16. Specific major items of equipment previously
received: 0-10.

E. Selection and Shipment of Donable Property

1. The manager of the program shall recommend to GSA the certification of donee screeners, as are qualified and needed, in accordance with FPMR 101-44.116.

2. The program office shall, insofar as practical, on items requested on the Request for Property form, arrange for inspection and release of property directly from the holding agencies by the donee at minimal service charges to cover legitimate costs, as detailed in Chapter 9 of this plan, when requested by the donee.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:35 (January 1998).

Chapter 17. Eligibility

§1701. Potential Donees

A. The program office will contact and instruct all known potential donees in the state on the procedures to follow to establish their eligibility to participate in the surplus property program. A listing of the potential donees in the state shall be established by using the standards and guidelines in FPMR 101-44.207, as well as the following guidelines.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:843 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:36 (January 1998).

§1703. Public Agencies

A. The Louisiana Secretary of State's *Roster of Officials*, which lists cities, towns, parishes, the judiciary, state departments, divisions, councils, boards, commissions, institutions, Indian tribes, etc.

B. The executive officers of the above units will be contacted for a listing of local departments, divisions, commissions, and councils, indicating their different activities and functions.

C. The Economic Development and Planning Commissions will be contacted for lists of their recipients who might be qualified.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:843 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:36 (January 1998).

§1705. Nonprofit, Tax-Exempt Units

A. State departments of education, higher education, public health, mental health, community affairs, youth services, and others will be asked for listings of all local units approved or licensed by their departments.

B. Existing listings of units now eligible to participate in the surplus property program.

C. National, regional, and state organizations and associations.

D. Inquiries, letters, telephone calls, etc., received relative to eligibility.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:36 (January 1998).

§1707. Promulgating the Program

A. Contacts will be made by letter, telephone calls, general meetings, and conferences with the groups in §1703 and §1705, supplemented when necessary by news releases, informational bulletins, and attendance at conferences and meetings to discuss the surplus property program.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

§1709. Requirements for Eligibility

A. Each unit will be required to file with the program office, as a condition of eligibility:

1. an Application, Certification, and Agreement form, signed by the chief executive officer of the donee, accepting the terms and conditions under which property will be transferred;

2. a written authorization, signed by the chief executive officer or executive head of the donee activity, or a resolution by the governing board or body of the donee activity, designating one or more representative to act for the applicant, obligate any necessary funds, and execute distribution documents;

3. assurance of compliance indicating acceptance of civil rights and nondiscrimination on the basis of sex or handicap in accordance with GSA regulations and requirements;

4. directory information, including the applicant's legal name, address, and telephone number, and status as a public agency or nonprofit, tax-exempt educational or public health unit;

5. program details and scope, including different activities and functions;

6. a listing of specific equipment, material, vehicles, machines, or other items in which the donee would be interested in the future;

7. financial information, if necessary, for the evaluation of relative needs and resources;

8. proof of tax-exemption under Section 501(c)(3) of the *Internal Revenue Code* of 1954 (for nonprofit units only);

9. proof that the applicant is approved, accredited, or licensed in accordance with FPMR 101-44.207.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

§1711. Recertification of Eligibility

A. All approvals of eligibility will be updated every three years except those programs that are certified, approved, and/or licensed annually, which must be updated every year.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

Chapter 19. Compliance and Utilization

§1901. Scope

A. The program office shall conduct utilization reviews to ensure compliance by donees with the terms, conditions, reservations, and restrictions imposed on:

1. any property not placed in use within one year from the date of acquisition, and not used for a period of one year;

2. any passenger motor vehicle;

3. any item of property valued at \$5,000 or more;

4. any item having characteristics that require special handling or use limitations imposed by GSA.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

§1903. Methods

A. The program office will arrange to visit each donee receiving major items of property, (i.e., items with a unit acquisition cost of \$5,000 or more and passenger motor vehicles with federal and/or state restrictions on the use of the property at least once during the period of restriction. All such visits will be made by the compliance/utilization audit staff or administration of the program.

B. Written reports of utilization from the chief executive officer of the donee will be requested during the periods of restricted activity or in the event of unusually heavy workloads at the program office.

C. Each visit on compliance utilization will encompass:

1. general utilization of property, including items with an acquisition cost of under \$5,000 and items listed under §1901.D;
2. compliance with all terms, conditions, reservations, and restrictions imposed on the use of the property;
3. any evidence of oversupply or stockpiling;
4. application advice for property needed;
5. effectiveness of the surplus property program;
6. recommendations for better service.

D. A report will be prepared on each compliance visit and submitted to the manager for approval. Follow-up action on noncompliance or nonuse will be taken, as necessary. Instances of suspected fraud or misuse will be reported to the Federal Bureau of Investigation and GSA. Program personnel will assist in any subsequent investigations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

Chapter 21. Consultation with Advisory Bodies, Public and Private Groups

§2101. Representation of the Program

A. The program office will arrange for and participate in local, regional, or statewide meetings of public and private organizations and associations which represent potential donees to disseminate information on the program, discuss procedures and problems, and obtain recommendations on determining relative needs, resources, and the utilization of property and how the program office can provide more effective service. The program office will regularly provide information on the donation program to state and local officials, and to heads of nonprofit institutions and organizations, and will actively participate in, and, upon request, provide speakers for conferences and meetings held by public and private organizations.

B. The program office, in consultation with advisory bodies and public and private groups, will invite eligible donees to submit expressions of interest and need for property items so that the program office may advise GSA of such requirements, including requests for specific items of property.

C. A Louisiana Federal Property Assistance Program advisory board shall be established by the manager of the program. It shall be composed of one representative from each of the eight areas listed in the program Quarterly Donation Report of Surplus Personal Property. The manager shall select the representative who is felt to best represent that segment of the donees. Advisory board members shall advise the manager on means to improve the program in the areas which they represent. The representatives shall serve without pay or compensation.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

Chapter 23. Audits

§2301. Reconciling Financial Records

A. At the close of each month the program office will conduct an internal audit which will reconcile the warehouse and office records on inventory value, disposals, property received, and property issued.

B. Annually, the audit staff of the program will conduct an audit which shall include, in addition to fiscal affairs, a review of the conformance of the program with the provisions of this plan of operation and the requirements of 41 CFR 101.44.

C. An external audit will be performed at least once every two years by the legislative auditor or by an independent certified public accountant or independent licensed public accountant who is certified or licensed by a regulatory authority of the state or other subdivision of the United States. It shall include an audit of all fiscal affairs and a review of the conformance of the program with the provisions of this plan of operation and the requirements of 41 CFR 101-44. A copy of the audit will be furnished by the program office, immediately upon completion, to the GSA regional office. The manager will advise the GSA regional office of all corrective actions taken, with respect to any exceptions or violations indicated by the audit. It is agreed that GSA may, for appropriate reasons, conduct its own audit of the program, following due notice to the governor of the reasons for such audit, and may visit the program office for purposes of reviewing the program's operation, when it deems it appropriate.

D. Financial records and all other books and records of the program shall be available for inspections by representatives of GSA, the general accounting office, or other authorized federal activities.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

§2303. Donee Audits

A. Any state or local government, nonprofit organization or educational institution that receives item(s) valued at \$25,000 or more annually from the Donation of Federal Surplus Personal Property Program shall have an audit performed in accordance with the Office of Management and Budget Circular A-133. A copy of the audit shall be sent to the program office immediately after the donee receives the audit.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

Chapter 25. Cooperative Agreements

§2501. Types of Agreements

A. The program has the authority to enter into such cooperative agreements with federal agencies and other state agencies as may be necessary, in accordance with FPMR 101-44.206. Such agreements may involve, but not be limited to:

1. use of property by the program;
2. overseas property;
3. use of federal telecommunications system;
4. interstate transfers;
5. others, as may be necessary.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), repromulgated LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

Chapter 27. Liquidation

§2701. Procedures and Time Frame

A. In the event of liquidation, or at the time determination has been made by state officials to liquidate the program, a liquidation plan will be prepared in accordance with FPMR 101-44.201.c.14.

B. The liquidation plan shall include:

1. reasons for liquidation;
2. schedule and estimated date of termination;

3. method of disposal of surplus property on hand, consistent with the provisions of FPMR 101.44.205;

4. method of disposal of agency's physical and financial assets;

5. retention of books and records for a five-year period following liquidation.

C. Such plan will be submitted to GSA and its approval secured prior to the beginning of liquidation.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), amended LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

Chapter 29. Forms

§2901. Types and Utilization

A. The distribution document (invoice) shall be used as the standard issue document and the invoice for all issues of surplus property to eligible donees or other states. The terms and conditions shall be printed on the back of each prenumbered distribution document (invoice).

B. Certain specific items require conditional transfer documents in addition to the standard forms:

1. noncombat type aircraft with a unit acquisition cost of over \$5,000 require a conditional transfer document;
2. combat type aircraft with a unit acquisition cost of over \$5,000 require a conditional transfer document;
3. vessels over 50 feet in length with a unit acquisition cost of over \$5,000 require a conditional transfer document.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), amended LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:39 (January 1998).

Chapter 31. Records

§3101. Time Frame for Retention

A. All official records of the program will be retained for no less than five years, except records involving property in compliance status for six years or longer will be kept for at least one year after the case is closed.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), repromulgated LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:39 (January 1998).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part XI. Fleet Management

Chapter 1. General Provisions

§101. Program Definition

A. Current Legal Authority. The Fleet Management Program for the state of Louisiana is established and operated under the authority given to the commissioner of administration by R.S. 39:361-363.

B. Mission, Goal, and Objectives of the Fleet Management Program

1. Program Mission Statement. The Fleet Management Program is established to provide motor vehicle, aircraft and related services to the state and to maintain safe, dependable, and cost-effective transportation for state employees who need designated types of vehicles or aircraft to perform their job responsibilities.

2. Program Goal and Objectives. To manage state provided transportation so as to reduce its cost and increase its benefit to state government by:

- a. establishing, reviewing, and revising statewide policies and standards for the Fleet Management Program;
- b. monitoring agency and vendor compliance with established policies and standards;
- c. financial planning in operations, maintenance, and capitalization of resources;
- d. identifying and adopting practices to maximize cost-effectiveness while maintaining proper vehicle and aircraft availability and utilization;
- e. receiving, investigation, and resolving all reports of abuse or misuse of fleet vehicles or aircraft.

C. Scope of the Fleet Management Program

1. Agency Scope. The state entities included in the scope of the Fleet Management Program are all agencies, boards, commissions, councils, departments, or other entities of the executive branch of government; all state colleges and universities; and all offices and entities of the judicial and legislative branches of government.

2. Vehicle Scope. To be included in the Fleet Management Program, vehicles or aircraft must be owned by the state or under lease by a state agency, and meet the criteria of either Subparagraph a or b below:

- a. motorized and able to be licensed, with four or more wheels, whose primary use is surface transportation of passengers or delivery of small equipment and supplies;

b. motorized aircraft owned or leased by an entity within the scope of the Fleet Management Program except the Office of State Police. This scope includes:

- i. all automobiles, specifically: subcompact, compact, mid-size, full size, and station wagons;
- ii. all light duty pickup trucks (under two tons);
- iii. special use passenger vehicles-specifically: limousines, sport cars, ambulances, and motor homes (RV);
- iv. all cargo and passenger vans-mini through maxi;
- v. all busses;
- vi. utility trucks and carryalls (under two tons);
- vii. all motorized aircraft.

D. Definitions. For the purpose of these regulations, the following words have the meaning indicated.

Agency Any state entity as identified in §101.C.1. above.

Agency Head Use herein refers to statewide elected officials, the commissioner of administration, secretaries of executive departments appointed by the governor, presidents and chancellors of state colleges and universities and the equivalent position in the Office of the Governor, on state boards, commissions, and councils, or in the legislative and judicial branches.

Agency Property Manager The employee designated by the agency head as the custodian of state property within the agency and who shall be responsible for all the property within his agency until his release from responsibility is approved by the commissioner.

Agency Transportation Coordinator The employee designated by the agency head as the coordinator of fleet vehicles within the agency and who shall be responsible for any fleet management functions until his release from responsibility is acknowledged by the commissioner of administration.

Break-Even Mileage The annual mileage traveled on official state business above which it is more economical to provide the employee with a personally assigned vehicle and below which, if there is not a pool vehicle available, it is more economical to reimburse the employee for use of the employee's personal vehicle.

Commissioner The Commissioner of Administration.

Fleet Vehicles Vehicles that meet the criteria and scope as stated above in §101.C.2, Vehicle Scope of the Fleet Management Program.

Home Storage—The assigned off-duty storage location of the fleet vehicle is off state property and the vehicle is used for commuting, as defined by the Internal Revenue Service, by the individual to whom authorization for home storage is given.

Louisiana Property Assistance—That state agency within the Division of Administration delegated by the Commissioner of Administration as responsible for designated fleet management functions.

Luxury Vehicles—The Division of Administration, Office of Fleet Management and Office of State Purchasing will develop the parameters which will identify luxury vehicles.

Personal Assignment—The exclusive assignment of a fleet vehicle to one particular employee for permanent use in accomplishing the duties of the employee's position.

Personally Assigned Vehicle—A fleet vehicle assigned exclusively to one particular employee for permanent use in accomplishing the duties of his/her position.

Pool Vehicle—Any fleet vehicle which is not a personally assigned vehicle is a pool vehicle. Pool vehicles are made available to state employees on a specific trip basis.

State Employee—Any classified or unclassified employee of the state of Louisiana; any duly appointed member of a state board, commission, or advisory council; and any other person who has received specific approval from the Division of Administration to operate or travel in a fleet vehicle.

State Fleet Manager—The Commissioner of Administration or the person appointed by the Commissioner of Administration as responsible for the implementation, monitoring, and overall administration of the Statewide Fleet Management Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363 and R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 13:15 (January 1987).

§103. Functions of the Fleet Management Program

A. In accordance with the responsibilities and authority vested in the commissioner of administration by Sections 361 and 362 of Title 39 of the Louisiana Revised Statutes of 1950, as amended, inter-agency management of state-owned vehicles is the responsibility of the Division of Administration. The functions of the State Fleet Management Program shall include:

1. program planning:

a. long range planning for the Fleet Management Program. The state fleet manager shall be responsible for:

i. the continuous review of the scope of the Fleet Management Program including identifying and defining vehicle types to be included in the program, reviewing the scope of agencies subject to the rules and regulations established by the Division of Administration, and reviewing the scope of the functions of the Fleet Management Program;

ii. the review and evaluation of the overall Fleet Management Program objectives and revision of the objectives as needed;

iii. the review and recommendation of proposed fleet management policies;

iv. the review and recommendation of proposed legislation concerning fleet management;

v. the development of operating and performance standards for fleet vehicles and establishment of minimum preventive maintenance requirements;

vi. the development and maintenance of an operator's manual for fleet vehicles. This manual establishes minimum preventive maintenance procedures and instructions for the completion of the Daily Vehicle Usage Log (DOA form MV-3). It will include procedures for the safe operation of fleet vehicles and accident-reporting procedures as established by the Division of Administration, Office of Risk Management;

vii. the development and maintenance of a directory of state fuel depots;

viii. the development and maintenance of a directory of the agency transportation coordinators;

ix. the development of performance evaluation standards for the Fleet Management Program;

x. the definition and revision as required of the operational methods and procedures of the Fleet Management Program;

xi. the recommendation of a plan for obtaining the resources needed by the Fleet Management Program to meet the goals and objectives of the program.

b. Annual planning for the Fleet Management Program. The state fleet manager shall be responsible for:

i. the assessment of state fleet vehicles. Annually, the state fleet manager shall calculate the break-even mileage and shall use this calculation to determine, after consultation with agency transportation coordinators, whether to retain, replace, or dispose of vehicles without replacement;

ii. the reevaluation of the rate by which employees are reimbursed for using privately owned automobiles to travel on state business;

iii. the annual evaluation of specifications for the purchase of fleet vehicles. The state fleet manager shall recommend to the director of state purchasing changes in the specifications for the purchase of new vehicles based on the previous year's experience with fleet operations. The Office of State Purchasing shall then develop said specifications and establish procedures for the purchase of new vehicles by state agencies. These specifications shall exclude luxury automobiles and shall not include the following specific items of luxury equipment:

(a). automatic or electric powered seats;

(b). automatic or powered windows;

(c). automatic or powered antennas;

- (d). automatic or powered locks;
- (e). any type of sunroof;
- (f). vinyl or hard top roofs;
- (g). spoked or sports designed wheel covers or hubcaps;
- (h). dual or multicolored exterior paint schemes;
- (i). tilting or telescopic steering wheels;
- (j). automatic climate control systems;
- (k). tape players;
- (l). stereo radios.

c. Those items listed as luxury equipment may not be added by the agency to the automobile after the purchase or lease of said motor vehicle except at the employees own expense and shall become the property of the state. Those vehicles assigned for the personal use of statewide elected officials are exempt from §103.A.1.b.iii.

2. Program Operations. The effective and efficient utilization and operation of the fleet vehicles requires the cooperation of the state fleet manager and all agencies within state government. Each agency head is ultimately responsible for the operation of the Fleet Management Program within the respective agency. Each agency head shall designate one individual as the agency transportation coordinator. The agency head shall submit the name, position, mailing address, and telephone number of this person to the state fleet manager by July 1, 1986 and update as changes occur. In order to more efficiently fulfill the responsibilities outlined in the rules and regulations, each agency head, with notification of and acknowledgement from the state fleet manager may designate appropriate employees in smaller organizational units as agency transportation coordinators. The successful operation of the Fleet Management Program is dependent on the following division of responsibilities.

a. Dissemination of Division of Administration Rules and Regulations. It shall be the responsibility of the state fleet manager to function as primary liaison with the agency transportation coordinators and to disseminate to the coordinators all statewide fleet management rules and regulations.

b. Vehicle Receiving

i. It shall be the responsibility of the Office of State Purchasing to insure delivery of all newly purchased state-owned fleet vehicles to Louisiana Property Assistance, except: state trooper cars, undercover cars, and DOTD vehicles.

ii. Upon delivery of newly purchased state-owned fleet vehicles to Louisiana Property Assistance, it shall be the responsibility of the state fleet manager to insure that:

(a). the vehicles are inspected for compliance with purchasing specifications;

(b). the vehicles are inspected to determine the condition of the vehicles at delivery;

(c). an operator's manual is inserted into each vehicle which will include all procedures for the safe operation of fleet vehicles and accident reporting procedures as established by the Division of Administration, Office of Risk Management as well as minimum preventive maintenance procedures and instructions for the completion of the Daily Vehicle Usage Log (DOA form MV-3);

(d). the appropriate state identification is affixed to all fleet vehicles prior to their leaving the agency premises of Louisiana Property Assistance.

iii. It shall be the responsibility of the agency transportation coordinator to apply to the Department of Public Safety for vehicle license plates and to notify the state fleet manager, within 45 days of receipt, of both the license number and agency property tag number assigned to a new vehicle and any subsequent number changes which may occur.

c. Vehicle Disposal. Upon determination by the agency head that a vehicle is ready for disposal or determination by the commissioner that an under-utilized vehicle is subject to disposal without replacement, the vehicle shall be disposed of in accordance with Louisiana state law.

i. It shall be the responsibility of the agency property manager to prepare and forward to Louisiana Property Assistance Agency the State Property Transfer Form (DOA BF-11) requesting disposal of the vehicle.

ii. Upon receipt of the DOA form BF-11, the director of the Louisiana Property Assistance Agency shall be responsible for the review of the form and approval or disapproval.

iii. Upon notification from Louisiana Property Assistance that the transfer has been approved, the agency property manager shall notify the agency transportation coordinator who shall be responsible for the transfer of the vehicle to Louisiana Property Assistance.

iv. The state fleet manager shall establish procedures for the transfer of under-utilized vehicles to surplus.

d. Vehicle Assignment

i. No person may be authorized to operate or travel in a fleet vehicle unless that person is a state employee as defined in §101.D.14 above.

ii. No state employee of any agency may be assigned to operate a pool fleet vehicle or a personally assigned vehicle without the respective agency having on file a completed, signed and checked Louisiana State Employee Driver Safety Program Authorization/History form (DA 2054). The agency transportation driving coordinator shall be responsible for maintaining a file on all signed and completed DOA forms (DA 2054).

iii. No state vehicle owned or leased shall be used by a public or private individual for other than performing official state business. The personal use of a state-owned or leased vehicle is prohibited with the exception of home storage commute miles if approved by the Commissioner of Administration via the DOA form MV-2.

iv. Personal assignment of fleet vehicles is not permitted without specific approval from the Commissioner of Administration via the DOA form MV-2. Criteria which merit request for personal assignment include:

(a). a state employee in a position which requires, in performance of assigned duties, that the employee drive in excess of the break-even mileage as established by the Commissioner of Administration. This mileage should accrue consistently throughout the year, not sporadically month to month;

(b). a state employee in a position of law enforcement who has the power to arrest and uses this power in the regular performance of his/her duties;

(c). a state employee in a position which requires, in performance of assigned duties, regular and unscheduled use of a special use vehicle or a vehicle with special equipment installed (e.g., hazardous waste spill investigation equipment, bar lights for use in emergency situations, handicapped driver equipment, etc.);

(d). statewide elected officials, the governor's executive counsel, the Commissioner of Administration, secretaries of executive departments, presidents and chancellors of state universities and colleges, and their equivalent in the judicial and legislative branches of government and vehicles purchased and assigned to the offices of statewide elected officials. (NOTE: These will be approved pending submission of the requests on properly completed DAMV-2 forms in order to assure proper record keeping);

(e). additional exceptions as may be granted by the Commissioner of Administration and the Joint Legislative Committee on the budget. Individual requests for such exceptions must be submitted in writing to the state fleet manager along with accompanying documentation which shows a history of need for the use of a fleet vehicle. The state fleet manager shall forward requests with recommendations to the Commissioner of Administration. All requests must be signed by the agency head and the agency transportation coordinator.

v. It shall be the responsibility of the agency transportation coordinator to insure that the Personal Assignment Agreement (DOA form MV-2) is completed, signed and approved by the commissioner prior to the personal assignment of a vehicle.

vi. Annually, it shall be the responsibility of the agency transportation coordinator to insure that a Personal Assignment Agreement (DOA form MV-2) is completed and forwarded to the state fleet manager by May 1 and is signed and approved by the commissioner in order to continue the personal assignment into the new fiscal year beginning July 1. Any personal assignment approved by the commissioner

during the year shall expire June 30 and renewal will require submission of a Personal Assignment Agreement (DOA form MV-2) as described above. As an alternative to submitting individual MV-2 forms for employees who are requesting renewal of personal assignment and/or home storage approval for the next fiscal year, the state fleet manager may accept a listing of those employees who are currently approved for personal assignment and/or home storage for update purposes. In order to be approved, the listing must consist of only those names of employees who have been previously approved on an individual MV-2 form, with current and correct information, and is on file with the state fleet manager and the originating agency. Any changes to the original information on the MV-2 form must be submitted on a new MV-2 form for approval at the time of the change. This list shall consist of the name of the employee, social security number of the employee, and vehicle identification number of the vehicle that is personally assigned and/or home stored. The list must be approved by the agency transportation coordinator and the agency head prior to submission to State Fleet Management.

vii. It shall be the responsibility of the agency transportation coordinator to insure that a personally assigned vehicle shall be made available for official use by other state employees when it would otherwise not be used and that such use is noted on the Daily Vehicle Usage Log (DOA form MV-3).

e. Vehicle Storage and Commuting Policies. Each fleet vehicle shall have a designated overnight storage site on property owned or leased by the state regardless of whether the vehicle is personally assigned or a pool vehicle, except as provided in §103.A.2.e.i below.

i. Home storage of fleet vehicles is prohibited unless required and/or permitted and approved by the Commissioner of Administration via the DOA form MV-2. Criteria which merit request for home storage include:

(a). law enforcement officers with the power of arrest who use this power in the regular performance of daily job duties and whose home storage of a fleet vehicle is deemed by their agency head to be in the best interest of public safety and law enforcement (required);

(b). employees for whom the provision of transportation to and from the workplace is a condition of employment as approved at the time of employment by the Commissioner of Administration (required);

(c). employees whose job duties require the use of special use vehicles or vehicles with special equipment installed outside of normal working hours and for whom home storage of such vehicles can be documented as either cost effective to the state or necessary to protect the safety and/or health of the public (required);

(d). statewide elected officials, the governor's executive counsel, the Commissioner of Administration, secretaries of executive departments, presidents or chancellors of state universities and colleges, and their equivalent in the judicial and legislative branches of government (permitted);

(e). additional exceptions as may be decided by the Commissioner of Administration and the Joint Legislative Committee on the budget. Individual requests for such exceptions must be submitted in writing to the state fleet manager along with documentation which demonstrates that home storage is in the best interest of the state. The state fleet manager shall forward requests with recommendations to the Commissioner of Administration. All requests for exceptions must be signed by the agency head and the agency transportation coordinator (required/permitted).

ii. It shall be the responsibility of the agency transportation coordinator to insure that the Home Storage Agreement (DOA form MV-2) is completed, signed, and approved by the commissioner prior to allowance of home storage of any fleet vehicle.

iii. Annually, it shall be the responsibility of the agency transportation coordinator to insure that a Home Storage Agreement form (DOA form MV-2) is completed and forwarded to the state fleet manager by May 1 and is signed and approved by the commissioner in order to continue home storage into the new fiscal year beginning July 1. Any home storage approved by the commissioner during the year shall expire June 30 and renewal will require submission of a Home Storage Agreement (DOA form MV-2) as described above. As an alternative to submitting individual MV-2 forms for employees who are requesting renewal of personal assignment and/or home storage approval for the next fiscal year, the state fleet manager may accept a listing of those employees who are currently approved for personal assignment and/or home storage for update purposes. In order to be approved, the listing must consist of only those names of employees who have been previously approved on an individual MV-2 form, with current and correct information, and is on file with the state fleet manager and the originating agency. Any changes to the original information on the MV-2 form must be submitted on a new MV-2 form for approval at the time of the change. This list shall consist of the name of the employee, Social Security Number of the employee, and vehicle identification number of the vehicle that is personally assigned and/or home stored. The list must be approved by the agency transportation coordinator and the agency head prior to submission to State Fleet Management.

iv. It shall be the responsibility of the agency transportation coordinator to insure that a vehicle approved for home storage shall be made available for official use by other state employees when it would otherwise not be in use by the employee for whom storage is approved and that such use is noted on the Daily Vehicle Usage Log (DOA form MV-3).

f. Vehicle Operations. It shall be the responsibility of the agency transportation coordinator to insure that:

i. all drivers of fleet vehicles are familiar with and are in compliance with the procedures for safe operation of fleet vehicles, minimum preventive maintenance procedures, accident reporting procedures, and the completion of the Daily Vehicle Usage Log (DOA form MV-3) as set forth in the Fleet Vehicle Operator's Manual;

ii. any state employee that operates a fleet vehicle has a valid state license to operate that vehicle and has on file a completed and signed Louisiana State Employee Driver Safety Program Authorization/Driving History form (DA 2054) and, when applicable, a Personal Assignment and/or Home Storage agreement (DOA form MV-2);

iii. all daily vehicle usage logs (DOA form MV-3) for both personally assigned and pool vehicles are approved by the appropriate supervisor and received by the agency transportation coordinator by the third working day of the month following the month to which the report pertains. The approving supervisor is responsible for auditing each respective DOA form MV-3. MV-3 data may be submitted monthly via magnetic media provided the information is formatted as required by the Division of Administration and the agency has received prior approval from the state fleet manager to submit data in this manner;

iv. preventive maintenance is performed on all fleet vehicles and recorded on the Preventive Maintenance Record (DOA form MV-4) or a maintenance form approved by the state fleet manager;

v. any additional duties which are required to monitor the utilization of fleet vehicles and to insure their most efficient and effective use shall be performed;

vi. when fuel is not available from a state-operated facility, self-service facilities shall be used for all purchases of fuel for state-owned or leased vehicles when utilizing commercial stations.

g. Maintenance of Files and Records

i. It shall be the responsibility of the agency transportation coordinator to insure that:

(a). a completed and signed Louisiana State Employee Driver Safety Program Authorization/Driving History form (DA 2054) is on file at the agency for every driver of fleet vehicles;

(b). all Personal Assignment and/or Home Storage Agreements (DOA form MV-2) are completed and forwarded to the state fleet manager for approval prior to the assignment of a personal vehicle to an employee, or the allowance of home storage and annually by May 1 thereafter;

(c). all Daily Vehicle Usage Logs (DOA form MV-3) containing accurate information on miles traveled, repair/maintenance costs, and operating costs, are completed, approved, and forwarded to the state fleet manager by the thirtieth day following the end of the month to which the report pertains;

(d). records are kept on all mileage reimbursement to state employees that have used privately owned vehicles to travel on state business. This reimbursement information shall be reported monthly to the state fleet manager no later than the thirtieth day following the end of the month to which the report pertains. A more extensive report on mileage reimbursement shall be filed with the state fleet manager for each fiscal year by the thirtieth day following the end of the fiscal year;

(e). an annual report is submitted to the state fleet manager by September 30 of each year containing the following information for the preceding fiscal year concerning each aircraft owned or leased by the agency: type of aircraft, make, model, year, primary user, if any, mileage traveled or hours of use, annual rental or lease cost, if not purchased, or the purchase price;

(f). current and complete records concerning preventive maintenance (DOA form MV-4) on each fleet vehicle assigned to, owned by or used by the agency are completed and maintained in an agency file after review by the agency transportation coordinator for deficiencies.

ii. It shall be the responsibility of the Louisiana property assistance director and state fleet manager to insure that the following files are maintained and updated at the state level based on information supplied by the agency property managers and the agency transportation coordinators:

- (a). the fixed asset file;
- (b). the daily vehicle usage log file;
- (c). the personal assignment/home storage file;
- (d). the employee mileage reimbursement file.

h. Management Reporting. The state fleet manager shall be responsible for the preparation of the commissioner of administration's quarterly and annual reports on the status of fleet vehicles and aircraft to the Legislature. The reports shall present the information required by R.S. 39:362 and 363.

3. Program Control. It shall be the responsibility of the state fleet manager to insure that control is maintained over the operation of the Fleet Management Program.

a. Inventory. It shall be the responsibility of the state fleet manager to require all agency transportation coordinators to conduct an annual audit of the master listing of fleet vehicles for their respective agencies. The information provided will be used to verify that the vehicle information in fleet management's records correctly reflects the actual vehicles used by the agency and the pertinent characteristics of each fleet vehicle, and to verify the accuracy of records on personal assignment and home storage of fleet vehicles.

b. Monitor Policy Compliance. It shall be the responsibility of the state fleet manager to conduct random audits to verify agency compliance with the statewide policies regarding:

- i. personal assignment of fleet vehicles;
- ii. home storage of fleet vehicles;
- iii. employee mileage reimbursement for use of privately owned vehicles on state business;
- iv. minimum preventive maintenance standards as set forth in the Fleet Vehicle Operator's Manual.

c. Review Department Requests for Exception to Policy. All requests for exceptions to these rules and regulations shall be in writing and signed by the agency head and the agency transportation coordinator and shall be forwarded with accompanying documentation to the state fleet manager. It shall be the responsibility of the state fleet manager to review all such requests for exceptions and forward the request with recommendations to the commissioner of administration.

d. Potential Abuse Investigation. It shall be the responsibility of the state fleet manager to insure that all reports of abuses in the use of state fleet vehicles are fully investigated. The state fleet manager shall, with cooperation of the appropriate agency transportation coordinator:

- i. receive and initiate a file on each abuse complaint;
- ii. gather facts about each case;
- iii. initiate appropriate action;
- iv. note completion of the investigation and action taken in the file;
- v. maintain the file on reported cases of abuse.

4. Program Evaluation. It shall be the responsibility of the state fleet manager to regularly evaluate the Fleet Management Program. The state fleet manager shall be responsible for:

- a. preparing budgetary requests and monitoring expenses of the Fleet Management Program;
- b. planning and conducting operational audits of agency fleet management programs and reporting all findings to the legislative auditor;
- c. planning and conducting all special projects. The state fleet manager shall be responsible for planning and conducting all projects designed to investigate problems within the state fleet management program or problems discovered during the operational audit of agency fleet management programs and developing solutions for these problems.

5. All other responsibilities involving the planning, operation, control, and evaluation of the Fleet Management Program not herein specifically retained by the Commissioner of Administration and the commissioner's designee, the state fleet manager, are hereby granted the respective agency heads. All such agency responsibilities must be conducted using methods and procedures consistent with the overall mission and objectives of the program established by the commissioner and in accord with these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363 and R. S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 13:15 (January 1987), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 13:742 (December 1987), LR 23:300 (March 1997).

§105. Nonexclusion

A. These regulations supersede and replace PPM 63 (LAC 4:V.Chapter 25) and all other previous regulations and exceptional permissions, both written and verbal. Any exclusion request shall be submitted to the commissioner through the state fleet manager for consideration. Any

exclusion from these regulations must be approved in writing by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 13:19 (January 1987).

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Index

Abandonment or Suspension, 42	Bid(s)
Acquisition	Addenda Modifying Invitation for, 4
by Transfer from State Surplus Property, 82	Awarding of, 8
Space, Method, 53	Content of the Invitation for, 3
Administration; Exceptions (R.S. 40:1723), 52	Correction and Withdrawal of, 55
Administrative	Disposition of, or Proposals, 12
Appeal to the Commissioner, 22	Evaluation and Award, 7
Decisions, Judicial Appeal from, 23	Guaranty and Bond, 6
Agency	Late, 5
Inventory Master File Interface, 86	Mistakes in, 6
Numbers, 77	Pre-, Conferences, 5
Reporting Requirements: Summary, 82	Pre-Opening Modification or Withdrawal of, 5
Responsible, 89	Receipt, Opening and Recording of, 5
Anticompetitive Practices, 17	Rejection of,
Detection of, 17	and Cancellation of Invitations for, or Requests for
Possible, 17	Proposals, 55
Practices, Reporting Suspected, 17	Individual, or Proposals, 12
Appeals, 24	Tie, 7
Appendix A C Sample Contract, 72	Bidder
Appendix B C Sample Certification, 73	Lists, 5
Appendix C C Suggested Checklist for Review of Personal,	Submissions, 4
Professional, Consulting and Social Services Contracts,	Bidding
73	Identical, 17
Appendix D C Agency Transmittal Letter, 74	Time, 4
Appendix E C Quarterly Report on Small Purchase Contracts,	Budget
74	Office, Responsibility of the Division of Administration,
Appendix F C Performance Evaluation, 74	83
Appendix G C Sample Auditor's Opinion for Contract	Request Forms, Instructions for Preparation of Capital
Compliance Audits, 75	Outlay, 44
Application, 9, 10, 12, 20, 53	Building Permits and Occupancy Permits (R.S. 40:1724), 52
Appropriation(s) Bill(s), 25, 89	Cancellation
Assignment(s), 8	of Solicitations C Notice, 11
of Proceeds of Lease and Assignment of Lease, 56	Reasons for, 11
Audit of Records, 16	Capital Outlay Bill, 26
Authority, 25	Compensation, 36
Centralization of Contracting, 13	Condition(s)
Delegation of, 61	Definition of Emergency, 10
Delegation of Signature, 66	for Use of
Inventory Disposition, 83	Multi-Year Contracts, 15
to Make Emergency Procurement, 10	Sole Source Procurement, 9
to Prepare Specifications, 1	of the Contract, 35
Policy, Purpose, and Application, 53	Confidential Privileged Information, 21
Award(s)	Confidentiality of Technical Data or Trade Secrets, 66
Bid Evaluation and, 7	Construction Budget (AFC), 36
Documentation of, 8	Contract(s)
Multiple, 14	Condition
Progressive, 14	for Use of Multi-Year, 15
Publicizing, 8	of the, 35
	Contents, 63
	Cooperative Purchasing Agreement in Form of Open-
	Ended State, 18

- Cost Reimbursement, 66
- Cost-Plus-a-Percentage-of-Cost, 14
 - for \$10,000 or Less, 62
 - for Data Processing Consulting Services, 70
- LaMAS (Louisiana Multiple Award Schedule) State,
 - Based on GSA Prices, 19
- Modification of, 63
- Multi-Year, 66
 - Procedure, 15
- Policy Regarding Selection of, Types, 13
- Provisions, 16
- Submission of, 63
- Termination of, 42, 63
- Types of, 14
- Contractual Review Process, 64
- Cooperative Purchasing
 - Agreement in Form of Open-Ended State Contract, 18
 - Shall Not Adversely Affect Employees, 18
- Declaration of Policy (R.S. 40:1721), 52
- Definitions, 12, 19, 25, 35, 77
 - and Classes of Contractual Services, 61
 - and Use, 2
 - of Emergency Conditions, 10
- Program, 99
- Deliveries(y), 8
 - and Acceptance of Equipment, 27
- Depositions and Discovery, 21
- Description, 15
- Designer(s)
 - Accounting Records, 42
 - Payments to the, 38
 - Services, 38
- Determination, 15
 - and Record of Emergency Procurement, 11
 - Independent Price, 17
 - of Responsibility, 55, 67
 - Required, 15
 - Written, of Nonresponsibility Required, 13
- Disposal, Methods of, 93
- Disposition
 - Inventory, Authority, 83
 - of Bids or Proposals, 12
 - of State Moveable Property, 85
- Documents
 - Availability of, 1
 - Ownership of, 43
- Donee Audits, 98
- Duty
 - Concerning Responsibility, 13
 - Faithful Performance of, Bond, 78
- Eligibility
 - Recertification of, 96
 - Requirements for, 96
- Emergency
 - and Sole Source Procurements, 71
 - Definition of, Conditions, 10
 - Procurement, 57
- Equipment
 - Generation of Selected, List, 26
 - Insurance on, 28
 - Maintenance on, 28
 - Payment for Selected, 28
 - Procurement of the Selected, 26
 - Substitutions to the, List, 26
 - Title to the Selected, 29
- Executive Order, 89
- Exempt Occupations, 65
- Exercise of Option, 16
- Extent of Agreement, 43
- Facilities, 89
- Fleet Management Program, Functions of the, 100
- Financial
 - Accounting, 90
 - Reconciling, Records, 97
- Financing, 91
- General, 29
 - Guaranty, 6
 - Purpose and Policies, 1
- Governing Law, 43
- Hearing
 - Decisions and Orders of the, Officer, 22
 - Initiation of, 20
 - Record, 20
- Historic Restoration Projects, 43
- Information Technology
 - Hardware
 - Procedures for Procurement of, 30
 - Maintenance, 31
 - Software
 - Procedures for the Procurement of, 30
 - Maintenance, 31
 - Support Services, 32
- Inspection, 16
- Inventory
 - Agency, Master File Interface, 86
 - Annual, Requirements, 80
 - Classification Code(s), 77
 - System, 87
 - Control, 89
 - Disposition Authority, 83
 - Marking and Identifying Items of Property on, 79
 - of Property, 80
 - State Master Listing of, 29
- Items of Property to be Inventoried, 79
- Judicial
 - Appeal from Administrative Decisions, 23
 - Procedure upon, Review, 23
- LaMAS (Louisiana Multiple Award Schedule) State
 - Contracts Based on GSA Prices, 19
- Lease(s)
 - Amendments to, 57
 - Assignment of Proceeds of, and Assignment of, 56
 - Clauses, 56
 - Renegotiation and Renewal of Current, 57
 - with Purchase Option, 16
- Louisiana
 - Building Code (R.S. 40:1722), 52
 - Property Assistance Agency, Reports from, 82
- Maintenance on Equipment, 28
- Marking and Identifying Items of Property on Inventory, 79

- Method(s), 97
 - for Distribution and Utilization, 94
 - of Disposal, 93
 - Source Selection, 11, 68
 - Space Acquisition, 53
- Minimal Charges, 92
- Multiple Award, 14
- Nonexclusion, 105
 - from State Property Control Regulations, 87
- Nonprofit, Tax-Exempt Units, 96
- Notice, 20
- Oaths and Affirmations, 21
- Official Notice, 21
- Organization of the Program, 89
- Other Conditions, 43
- Owner-User Agency Responsibilities, 35
- Payment(s)
 - for Selected Equipment, 28
 - to the Designer, 38
- Penalties, 87
- Policy(ies), 11, 53
 - General Purpose and, 1
 - Regarding Selection of Contract Types, 13
- Potential Donees, 95
- Preface, 52, 58
- Procedure(s)
 - and Time Frame, 98
 - for the Development of Specifications, 1
 - for (the) Procurement of Information Technology
 - Hardware, 30
 - Maintenance, 31
 - Software, 30
 - Maintenance, 31
 - Support Services, 32
 - upon Judicial Review, 23
- Procurement
 - Authority to Make Emergency, 10
 - Conditions for Use of Sole Source, 9
 - Department of Education, 19
 - Determination and Record of Emergency, 11
 - Emergency, 57
 - and Sole Source, 71
 - of the Selected Equipment, 26
 - Procedures for, of Information Technology
 - Hardware, 30
 - Maintenance, 31
 - Software, 30
 - Maintenance, 31
 - Support Services, 32
- Processing, Request, 26
- Schedule, 71
- Scope of Emergency, 10
- Sole Source, 57
 - Record of, 10
- Support Team, 70
 - Involvement, 71
 - Operations, 32
- Program
 - Definition, 99
 - Promulgating the, 96
 - Representation of the, 97
- Progressive Award, 14
- Property
 - Acquisition by Transfer from State Surplus, 82
 - Appointment of, Managers, 78
 - Disposition of State Moveable, 85
 - Inventory of, 80
 - Items of, to be Inventoried, 79
 - Marking and Identifying Items of, on Inventory, 79
 - Responsibility for, 78
 - Restrictions on, 92
 - Return of, by Donee, 91
- Proposals, Request for, 69
- Public Agencies, 95
- Publicizing Awards, 8
- Purpose, 53
 - General, and Policies, 1
- Qualifications, 86
- Recertification of Eligibility, 96
- Record(s)
 - Audit of, 16
 - Designer's Accounting, 42
 - of Sole Source Procurement, 10
 - Reconciling Financial, 97
- Regulations and Orders by the Commissioner, 83, 86
- Reporting Requirements, 87
- Request for Proposals, 69
- Resolution of Controversies, 56
- Responsibility
 - Determination of, 55, 67
 - for Property, 78
 - of the Division of Administration Budget Office, 83
 - Standards of, 12
- Restrictions
 - on Donations, 93
 - on Property, 92
- Return of Property by Donee, 91
- Revised Statutes, 72
 - and Louisiana Administrative Code, 58
- Rules of Evidence, 21
- Scope, 11, 18, 96
 - Emergency Procurement, 10
- Service Charges, 91
- Sheltered Workshops
 - Goods Manufactured or Services Performed by, 16
- Small Purchases, 9
- Sole Source Procurements, 57
- Source Selection Methods, 11, 68
- Space
 - Acquisition Method, 53
 - Offered, 55
- Special Donations, 92
- Specifications
 - Authority to Prepare, 1
 - Closed, for Certain Products, 58
 - Procedures for the Development of, 1
- Standards
 - Ability to Meet, 13
 - of Responsibility, 12
- State Master Listing of Inventory, 29

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

State Property

Nonexclusion from, Control Regulations, 87

Transaction Form DABF-11 (Revised 4-85), 84

Subpoenas, 21

Successors and Assigns, 43

Supply of Personnel, Information, and Services, 19

Suspension, Debarment and Reinstatement, 67

Taxes, 29

Technical Data, Confidentiality of, or Trade Secrets, 66

Time Frame for Retention, 98

Trade Secrets, Confidentiality of Technical Data or, 66

Types

and Utilization, 98

of Agreements, 98

of Contracts, 14

Use, 16

Intent to, 14

Vendor Fees, 24